

**SB**

**105**

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# STATE



# LINE

A Resource for Pro-Life Legislators

from Americans United for Life

MARCH 1995

- In **Montana**, HB442, which prohibits non-physicians from performing abortions, passed the Senate and has been signed by the governor.
- Also in **Montana**, parental-notice bill HB482 has now passed both houses and is awaiting the governor's signature.
- SB16, a **Kansas** fetal-homicide bill, has passed both houses and is awaiting the governor's signature. There is no limitation on the gestational age of the unborn child.
- HB1340, a bill requiring two-parent consent with judicial bypass, passed the **Tennessee** Senate 29-3. The bill allows for one-parent consent if a parent cannot be located after "reasonable effort" or if a parent is charged with incest. If passed, the bill would replace the current parental-notification statute.
- The **Washington** House passed HB1523, a one-parent notification bill. A bypass provision, emergency exemptions and fines for non-conforming doctors are part of the bill. An amendment was later added providing that if the father is under 18 years of age, his parents also must be notified. The bill died in the Senate without a hearing.
- In **Illinois**, the House passed HB955, a parental-notification bill, which allows the physician to give notice to a parent, grandparent, stepparent living in the household or a legal guardian at least 48 hours prior to performing an abortion on a minor. There are no civil or criminal penalties for non-conforming physicians.
- The **Illinois** Senate passed SB836, a one-parent notice bill with judicial bypass. This bill allows the state's attorney to file a civil suit against a physician who does not notify a parent.
- SB279, a **Missouri** counseling bill, passed in the Senate 26-6. The bill mandates that a woman seeking an abortion must talk to an independent, but state licensed, "case manager" who is familiar with available alternatives. The woman may refuse the service, but must sign an acknowledgement showing she was presented with the opportunity to confer with a case manager.
- In a 2-1 decision, the Ninth Circuit Court upheld a **Washington** state anti-assisted suicide law and ruled against a federal constitutional challenge. The law prohibits any assistance in suicide. The Court stated that there was no deprivation of a liberty interest under the due-process clause because there is no history or tradition of protecting suicide or assisted suicide. The Court also rejected the equal-protection argument because it determined that the refusal of life-sustaining medical treatment cannot be equated with assisted suicide. *Compassion in Dying v. State of Washington*, No. 94-35534.
- This month, the **Massachusetts** Supreme Judicial Court denied a wrongful death suit for the death of child who was stillborn, but not viable. *Thibert v. Milka*, No. SJC-06596.
- U.S. District Judge Rudolph Randa ruled that a portion of FACE is unconstitutional. He concluded that the part of the law that bans "non-violent, physical obstruction of reproductive health services clinics is unconstitutional" because it exceeds Congress' power under the Commerce Clause. *United States of America v. George Lyman Wilson, et al*, No. 94-CR-140.



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APR 27 1995

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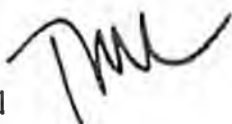
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MEMORANDUM

March 18, 1995

**SUBJECT:** Constitutionality of Requiring Parental Consent with a Judicial Bypass Procedure for Minor's Abortion - Update (SB 105)

**TO:** Senator Johnny Ellis  
Attn: Nina

**FROM:** Terri Lauterbach   
Legislative Counsel

This memorandum is sent to update a memorandum sent to you on this subject March 13, 1995.

The earlier memorandum discussed a 1989 California case in which a preliminary injunction had suspended the parental consent requirement pending the outcome of a trial on the merits. I have now ascertained that the preliminary injunction was upheld on appeal, the lower court trial on the merits concluded with a finding that the consent requirement was unconstitutional, and the lower court opinion on the merits has also been upheld after appeal. American Academy I, 214 Cal.App 3d, 263 Cal.Rptr. 46; American Academy II, 31 Cal.App.4th 861, 32 Cal.Rptr.2d 546, reh.den., Aug. 1, 1994, review granted, Sept. 29, 1994.

The appellate court opinion found that the interests alleged to be served by the consent requirement were compelling (state interest in the well-being of the minor, reducing the teenage pregnancy rate, and fostering the parent-child relationship), but they would not in fact be furthered by having the consent requirement. The court stated in its opinion that

The evidence was nothing less than overwhelming that the legislation would not protect these interests, and would in fact injure the asserted interest of the health of minors and the parent-child relationship. It also appears that the existing medical system in fact serves these asserted interests and that the legislation therefore is not the least intrusive means available of furthering them. . . . [We] also conclude that the judicial bypass procedure creates a substantial obstacle whose only effect is to hinder the minor from obtaining an abortion. Whether a minor is capable of giving informed consent to undergo an abortion is a question which can be more easily decided by a physician than a judge.

Senator Johnny Ellis  
March 18, 1995  
Page 2

This case adds additional weight to my conclusion in the earlier memorandum that "there is substantial reason to believe that a state court in Alaska could find SB 105 unconstitutional."

I have attached a copy of the Appendix to American Academy II, laying out the type of evidence relied on by the court. I apologize for not including this appellate case in the earlier memorandum. Please let me know if I can be of further assistance.

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Enclosure

burden placed on informational privacy. Having concluded that this legislation unconstitutionally interferes with autonomy privacy, we need not also consider whether it places an impermissible burden on informational privacy. Nor shall we consider the constitutional question of whether A.B. 2274 also violates equal protection guarantees. (See *People v. Williams* (1976) 16 Cal.3d 663, 667, 128 Cal.Rptr. 888, 547 P.2d 1000.)

#### CONCLUSION

The judgment and order of injunction are affirmed.

NEWSOM, Acting P.J., and DOSSEE, J., concur.

#### APPENDIX

The superior court noted that minors have been undergoing abortions for the last 20 years without parental involvement, and there was no evidence that the medical, emotional and psychological consequences of an abortion, particularly when the patient is an immature minor, are serious or can be long lasting. To the contrary, the uncontradicted evidence disclosed that an abortion is a medically safe procedure, particularly for adolescents, and that the risk of medical complications resulting from pregnancy and childbirth is significantly greater than the risk of undergoing a therapeutic abortion. The trial court concluded, therefore, that A.B. 2274 cannot be justified on the grounds of protecting the minor's physical well-being.

Additional evidence disclosed that minors are at no special psychological or emotional risk from abortion and, indeed, are less likely than adults to experience any adverse psychological reaction to the procedure. Few women, whether adults or minors, suffer psychological or emotional consequences from abortion. Indeed, the evidence was that minors who choose to undergo abortion experience a sense of self-esteem and sense of control equal to, and ultimately greater than, that experienced by those who choose to carry to term. There was evidence that a child's emotional and developmental well-being is adversely affected by a family situation in which significant decisions, such as the abortion decision, are made without benefit of parental involvement. Contrary to any implication by the State, however, the evidence was that the decision by the minor not to involve a parent in the abortion decision does not lead to a poor familial relationship, but is the result of a poor familial relationship. It

addition, the evidence was that parental involvement can have an adverse psychological or emotional effect on the minor, particularly when that involvement is coercive or otherwise interferes with the minor's ability to make an autonomous decision. The evidence accordingly established that the decision to undergo an abortion does not itself cause emotional or psychological injury, and that compelling parental involvement in the decision does not aid, but can in fact injure, a child's emotional or psychological well-being. The trial court concluded, therefore, that A.B. 2274 cannot be justified on the grounds of protecting the minor's psychological or emotional well-being.

The superior court found support for the legislative finding that the capacity to become pregnant is not necessarily related to the capacity to exercise mature judgment. The court further found that the question must be whether a particular minor is mature enough to give informed consent to a medical procedure, i.e., abortion. As the superior court found, no operation may be performed unless the patient has given informed consent. Thus before a physician may perform an abortion, he or she must be satisfied that the patient, whether or not a minor, is in fact capable of giving informed consent for an abortion and that the decision to have an abortion is in fact the result of such informed consent--just as a physician must be satisfied that informed consent has been given for any medical procedure.

In addition, the evidence disclosed that adolescents in general are capable of the kind of cognitive and operational thinking required to give informed consent to medical procedures, including therapeutic abortions. Plaintiffs produced evidence that most adolescents, at least by the age of 14 or 15, are capable of adult decision making, exhibiting the ability to reason logically and to take into account both the short-term and long-term consequences of their behavior. The State did not claim otherwise but argued, through its expert witness, that the decision to undergo an abortion has ethical and moral overtones and that a woman is not capable of making a moral decision until the age of 18 or 19. Other expert witnesses, however, testified that young adolescents do in fact have the capacity to consider ethical matters and make moral judgments in the same manner as adults. It was further shown that adolescents follow the same process as do adults when considering and deciding whether to have an abortion. The superior court accordingly concluded that the evidence disclosed that adolescents as a group do not differ from adults as a group in their methods of making the decision whether or not to have an abortion.

Plaintiffs also introduced evidence that adolescents are in fact given a wealth of information and counseling designed to ensure that they understand and truly consent to whatever medical decision they ultimately make. Standardized counseling protocols have been implemented in any clinic receiving government funds. Counselors provide objective information and nondirective counseling on the risks, benefits and contraindications of both abortion and of carrying a pregnancy to term. For all of these reasons, and particularly in light of the fact that a physician may not perform any medical procedure, including abortions, without first having obtained the informed consent of the patient, the superior court concluded that A.B. 2274 is not necessary as a method of protecting minors from consenting to abortions without fully understanding the implications and effects of that choice on their health and well-being.

Thus, the evidence was that the interests asserted by the Legislature as its reasons for enacting A.B. 2274 will not be furthered by the legislation, and thus do not justify the burden the legislation places on the right of privacy.

The State argued that other interests not set forth in the legislative findings will be furthered by the legislation, specifically: (1) the interest in reducing the teenage pregnancy rate, and (2) the interest in preserving and fostering the parent-child relationship. As to the first of these arguments, the State introduced a study indicating that the adolescent pregnancy rate had dropped in the states of Minnesota, Missouri and Massachusetts following the adoption of a parental consent statute in each state. Plaintiffs, however, countered with evidence that in each instance the pregnancy rate had dropped for other reasons. They pointed out that during the same time periods the teenage pregnancy rate had also dropped in states with no parental consent statute, and introduced evidence that parental consent statutes did not reduce the rate of pregnancy, but simply caused minors seeking abortions to obtain them in other states. In other words, the evidence was that although the rate of abortion may have dropped, the actual rate of pregnancy did not. The superior court concluded that parental consent statutes have no effect on the adolescent pregnancy rate. Moreover, the court found that there are other methods of reducing teenage pregnancies less injurious to the right of privacy. These methods include education and counseling on the subjects of sexual conduct and birth control, and providing other forms of birth control. The court concluded, therefore, that A.B. 2274 cannot be justified on the ground that it will lower the rate of teenage pregnancies. The superior court also found that the State's position in effect was that the parental consent statute would be an effective deterrent to teenage sex. In other words, one method of deterring a teenager from engaging in sex would be to threaten her with

the possibility that she might be compelled to bear an unwanted child. The court, with good reason, questioned the rationality of prescribing pregnancy as punishment. (And see *Carey v. Population Services International* (1977) 431 U.S. 678, 694-695, 97 S.Ct. 2010, 2021, 52 L.Ed.2d 675 )

As to the interest in fostering and preserving the parent-child relationship, the court noted, again, that the evidence was that compelling a minor to consult a parent about an abortion decision cannot aid, and in many instances will in fact injure, the parent-child relationship. The superior court therefore concluded that a parent's right to control his or her children cannot supersede the minor's right of privacy in the area of procreative choice so as to justify legislation interfering with the minor's right of privacy. In all events, the evidence was that most minors do consult with their parents when deciding whether to have an abortion. Part of the counseling given minors is to encourage them to consult with their parents. Furthermore, studies show that minors are no more likely to consult with their parents in states having parental consent statutes than in states having no such legislation. The determinative factor is not the existence of a parental consent statute, but the quality of the parent-child relationship prior to the pregnancy. The likelihood that a child will consult a parent improves with the quality of that relationship, but the consultation itself has no positive effect on that relationship.

The evidence also showed that for many minors, consulting with a parent simply is not a reasonable option. Plaintiffs presented evidence that a significant number of families are abusive or otherwise dysfunctional. In a substantial number of these families, adolescent girls are at a particular risk for violence. Even the State's witnesses recognized that at least 10 percent of the state's families have none of the attributes for coping effectively with family problems, and other families have only a few such attributes. The trial court found that to the extent A.B. 2274 might compel any minor from an abusive family to discuss her pregnancy with her parent or parents, it would endanger the minor by causing her to place herself at physical and mental risk.

The court also found that a significant number of these adolescents ultimately will choose to undergo the judicial bypass procedure rather than consult with a parent. The evidence showed that this choice itself was detrimental to the well-being of the minor. Minors in states having parental consent statutes delay the decision to undergo an abortion; the percentage of delayed abortions therefore increases following the implementation of such legislation. The medical risks of abortion, however, increase as a pregnancy advances. Any delay in obtaining an abortion caused by the minor's reluctance to go through the judicial bypass procedure, accordingly, is potentially injurious to her health. From this evidence it follows that the implementation of A.B. 2274 will harm at least one of the interests the legislation is intended to further: the physical well-being of minors.

In addition, the judicial bypass procedure requires minors to go to court and to discuss private and intimate matters with a judge and other strangers. The evidence was that the procedure causes these adolescents extreme anxiety. Testimony from out-of-state judges who have presided over such proceedings established that the proceedings are difficult and upsetting. Moreover, the testimony further established that the judicial bypass procedures achieve no real end. The judges found that the minors as a rule were mature enough to make a choice, in which case the judge, as he or she was required to do, simply affirmed the minor's choice to undergo an abortion. In those instances in which the minor was not mature, the judges nearly universally concluded that she was not mature enough to become a mother and thus again decided that she should undergo an abortion, again affirming her choice. The evidence was that only an infinitesimal number of petitions were denied. The court found that of the 3,000 petitions heard in the first five years under the Minnesota statute, only 9 were denied. In the first five years under the Massachusetts statute, only 13 were denied and, of those, 11 denials were reversed on appeal. The result is that the evidence disclosed that the judicial bypass is a costly, unwieldy and essentially pointless procedure which achieves no purpose other than to cause stress to minors and delay the implementation of their decision to abort, thus rendering the abortion more dangerous.

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**MEMORANDUM**

March 13, 1995

**SUBJECT:** Constitutionality of Requiring Parental Consent with a Judicial By-Pass Procedure for Minor's Abortion (SB 105)

**TO:** Senator Johnny Ellis  
Attn: Nina Brudie

**FROM:** Terri Lauterbach *TL*  
Legislative Counsel

You have asked whether SB 105, if enacted, may be found unconstitutional.

In my opinion, depending on the evidence developed to support the purpose of the bill, there is substantial reason to believe that a state court in Alaska could find SB 105 unconstitutional. While a parental consent requirement for a minor's abortion has been upheld under the federal constitution when a judicial by-pass procedure was included, there are at least two states where a similar parental consent requirement with judicial bypass procedure has either been held unconstitutional under the state constitution (Florida) or has been enjoined because of the likelihood that the requirement was unconstitutional under the state constitution (California). The courts in those two states, Florida and California, based their decisions on the explicit privacy clauses in their state constitutions that offer broader protection than the federal constitution. Since Alaska's constitution also has an explicit privacy clause that has been construed to offer broader protection of privacy rights than the federal constitution, a court in Alaska could well decide that SB 105 is unconstitutional under the same reasoning used by the Florida and California courts. The crucial aspect will probably be whether the legislature can substantiate that a compelling state interest is served by the parental consent requirement.

**DISCUSSION**

SB 105 requires the consent of a parent, guardian, or custodian before the performance of an abortion for a minor unless the minor successfully petitions for court approval of the performance of the abortion without the consent of a parent, guardian, or custodian. The court process is known as a "judicial by-pass" procedure.

Senator Johnny Ellis  
March 13, 1995  
Page 2

This kind of parental consent requirement has been upheld by the United States Supreme Court under the federal constitution. Planned Parenthood Association of Kansas City, Missouri, Inc. v. Ashcroft, 462 U.S. 476 (1983).

However, this kind of parental consent requirement has been found unconstitutional by the Supreme Court of Florida under its state constitution and has been suspended in California through a preliminary injunction, based on the likelihood that the requirement was unconstitutional under California's constitution. In re T.W., a Minor, 551 So.2d 1186 (Florida 1989), rehearing denied; American Academy of Pediatrics v. Van De Kamp, 214 Cal.App.3d 831, 263 Cal. Rptr. 46 (1989).

In both Florida and California, the courts determined that the right to privacy was involved, that the right to privacy extended to minors, that the right was fundamental, and that the state needed a compelling state interest in order to justify the way the parental consent requirement impinged on the privacy rights of the minors who sought abortions. In both states, the courts looked at the interests that were suggested as compelling and found that they were not (Florida) or probably were not (California).

In Florida, the court considered whether the parental consent requirement advanced maternal health or fetal health, protected the minor, or preserved the family unit, similar to the interests set out in sec. 1 of SB 105. The Florida court held

The challenged statute fails because it intrudes upon the privacy of the pregnant minor from conception to birth. Such a substantial invasion of a pregnant female's privacy by the state for the full term of the pregnancy is not necessary for the preservation of maternal health or the potentiality of life... [The] additional state interests -- protection of the immature minor and preservation of the family unit... [are not] sufficiently compelling under Florida law to override Florida's privacy amendment. In re T.W., supra.

In California, the court considered the same kind of interests that are identified in SB 105<sup>1</sup> and responded in the following way:

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<sup>1</sup> The California statute being considered read as follows: "The Legislature finds as follows: (a) the medical, emotional, and psychological consequences of an abortion are serious and can be lasting, particularly when the patient is an immature minor; (b) the capacity to become pregnant and the capacity for exercising mature judgment concerning the wisdom of an abortion are not logically related; (c) minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences of their actions; (d) parents ordinarily possess information essential to a physician's exercise of his or her best medical judgment concerning a minor child; and (e) parents who are aware that their minor daughter has had an abortion may better ensure that she receives adequate medical attention subsequent to her abortion." According to the court, the California Attorney General also argued that the statute furthered the state interest in the preservation of the parent/child relationship. These asserted interests are almost identical to those set out in section 1 of SB 105.

There is no argument that the protection of minors from physical, psychological, and emotional harm manifests a compelling state interest. Plaintiffs, however, filed numerous declarations, reports, surveys, and related material which demonstrated an ability to prove at trial that the minors are well-protected, or even better protected, under current law; i.e., that [the parental consent requirement] will not in fact further the interest at issue.

There was evidence which indicates that all but a very few adolescent minors have the capacity for exercising mature judgment concerning the wisdom of an abortion, and that no abortion is performed on any minor who is not capable of making that decision until a mature, trained adult has determined that it will be in her best interests. There was evidence indicating that minors are well-aware of their medical histories and can supply medical personnel with the information to determine the best course of treatment. There was evidence indicating that pregnancy clinics employ well-screened persons who are thoroughly trained in meeting the physical, psychological and emotional needs of minors and that those needs are in fact met before, during and after an abortion. There was evidence that an abortion will not be performed until after a minor has been thoroughly counseled and her pregnancy options completely explained to her. There was evidence that the vast majority of minors who undergo abortions experience no, or very few, detrimental emotional after-effects, that such after-effects as may be experienced usually are the result of sociological factors rather than of the abortion, and that where there are emotional after-effects, counseling is provided.

In addition, there was evidence which indicates that in reducing the ability of a minor to make her own decision in the matter, [the parental consent requirement] will cause increased stress and depression. There was evidence that most minors are very frightened of court proceedings and that such proceedings cause additional stress and anxiety. There was evidence that some minors will choose to undergo illegal abortions rather than reveal the fact of their pregnancies to their parents or to a judge. There was evidence that minors who do not wish their parents to know of their pregnancies usually are correct in their assessment of the negative results that would flow from disclosure. There was evidence that [the parental consent requirement] will cause minors to delay making a choice whether to have an abortion because of the cumbersomeness of the judicial process, because of the difficulty of many minors in obtaining confidential access to the court, and because many simply are reluctant to take any of the options provided by the statute. There was evidence that abortions performed later in pregnancy are attended with increased health risks.

[W]e find . . . that the needs of all minors are met under current law and thus the superior court reasonably could have believed that there is a likelihood that the People will not meet their burden of proving at trial that the discrimination inherent in [the parental consent requirement] is justifiable.

\* \* \*

The Attorney General contends that [the parental consent requirement] furthers another state interest: the preservation of the parent/child relationship, or the benefit to the child resulting from communication with her parents about her pregnancy.

There was evidence, however, that minors currently are encouraged to consult with their parents, that many in general, and most of the younger minors, do in fact consult with their parents. There was evidence that parental consent statutes do not increase the number of minors who consult with their parents; rather the minors choose to undergo the judicial bypass procedure, to take unwanted pregnancies to term, or have illegal abortions. There was evidence that many minors who do not now choose to consult with their parents come from dysfunctional families where the discovery of their pregnancy will only adversely affect the parent/child relationship and may result in harm to the minor. We therefore find no abuse in the trial courts' determination that plaintiffs demonstrated a likelihood of proving at trial that [the parental consent requirement] will not further the state interest. American Academy of Pediatrics v. Van De Kamp, supra at 51 - 53.

I have set out at length the California court's basis for its decision because it illustrates the kind of evidence that will probably be crucial for the legislature to develop in support of SB 105 if its constitutionality is to be upheld. It also illustrates the type of evidence that will likely be encountered in any challenge to SB 105.

Since the Alaska constitution has an explicit privacy clause like the Florida and California constitutions, the constitutionality of SB 105 will likely turn on whether the legislature can support with evidence the interests that SB 105 says are compelling enough to justify the parental consent requirement. If sufficient supporting evidence is presented, SB 105 will probably be upheld. If sufficient supporting evidence is not presented, and there is the kind of countervailing evidence presented by challengers of the bill as was presented in Florida and California, there is substantial reason to believe that an Alaska court would not uphold the parental consent requirement.

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February 15, 1995

VIA LEGISLATIVE POUCH

Senator Loren Lehman  
State Capitol  
Room 113  
Juneau, AK 99801-1182

Re: Memorandum Concerning Constitutional Limitations of Parental  
Consultation Requirements as a Precondition to Minor Abortion  
Our File No. 595-001

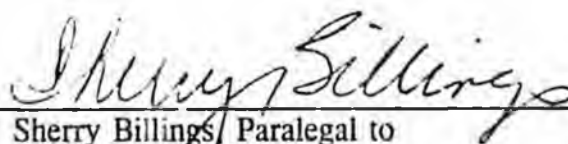
Dear Senator Lehman:

Please find enclosed the Memorandum Concerning Constitutional Limitations of Parental Consultation Requirements as a Precondition to Minor Abortions and supporting cases. If you need further assistance, please contact our offices.

Very truly yours,

BRENA & McLAUGHLIN, P.C.

By:

  
Sherry Billings, Paralegal to  
Kevin G. Clarkson

KGC:sb  
Enclosure

## MEMORANDUM

**TO:** Senator Loren Lehman  
**FROM:** Kevin G. Clarkson *KC*  
**DATE:** February 13, 1995  
**RE:** Constitutional Limitations of Parental Consultation Requirements as a Precondition to Minor Abortions

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### INTRODUCTION

Pursuant to your request, I have reviewed the draft bill which you transmitted to me regarding parental notification, with an optional/alternative judicial bypass as a precondition to minor abortions in Alaska. I have also conducted legal research to determine, according to existing case law, what the constitutional limitations are for parental consultation requirements as a precondition for minor abortions. My legal research has included analysis of both the United States Constitution and the Alaska Constitution.

### QUESTIONS PRESENTED

1. What are the permissible limits of a parental consultation requirement as a precondition to a minor's abortion under the United States Constitution?
2. What affect, if any, does Alaska's constitutional protection of the right to privacy have upon the enforceability of a parental consultation requirement as a precondition to a minor's abortion?

### SHORT ANSWER

A one-parent consent requirement as a precondition to a minor's abortion is constitutionally permissible provided the statute contains an alternative judicial bypass procedure. To be constitutionally adequate, a judicial bypass procedure must allow the minor to obtain court

approval of her abortion decision without parental involvement if she can (1) show that she possess the maturity and information necessary to make her abortion decision, or (2) even if she cannot make the abortion decision by herself, that the desired abortion would be in her best interests. In addition, the judicial bypass procedure must ensure the minor's anonymity and must be conducted with expediency to allow the minor an effective opportunity to obtain the abortion. The Alaska Constitution's provision guarantying a right to privacy should not require a different conclusion.

## DISCUSSION

### I. Permissible Parental Consultation Provisions Under the United States Constitution

Pursuant to current law, an abortion regulation is unconstitutional only if it places an undue burden on the exercise of the woman's right to choose to have an abortion. Planned Parenthood v. Casey, \_\_\_ U.S. \_\_\_, 112 S. Ct. 2791, 2821 (1992). As the Court stated in Casey:

Regulations which do no more than create a structural mechanism by which the State, or the parent or guardian of a minor, may express profound respect for the life of the unborn are permitted, if they are not a substantial obstacle to the woman's exercise of the right to choose.... Unless it has that effect on the right of choice, a state measure designed to persuade her to choose childbirth over abortion will be upheld if reasonably related to that goal. Regulations designed to foster the health of a woman seeking an abortion are valid if they do not constitute an undue burden.

\_\_\_ U.S. at \_\_\_, 112 S. Ct. at 2821. Therefore, a regulation that places a burden on the exercise of a woman's right to an abortion is constitutional unless the burden is "undue." The State may permissibly enact laws that are "calculated to inform the woman's free choice, not hinder it." Id. As stated plainly in Casey, regulations which do no more than create a structural mechanism by which the state, or the parent or the guardian of a minor, may express profound respect for the life of the unborn are permitted, if they are not a substantial obstacle to the woman's exercise of the right to choose. U.S. at \_\_\_, 112 S. Ct. at 2821. "As long as Casey remains authoritative, the constitutionality of an abortion regulation thus turns on an examination of the importance of the State's interest in the regulation and the severity of the burden that regulation imposes on the woman's right to seek an abortion." Barns v. State of Mississippi, 992 F.2d 1335, 1339 (5th Cir. 1993).

In the area of abortion rights, even prior to the Supreme Court's recent retreat in Casey, \_\_\_ U.S. at \_\_\_, 112 S. Ct. at 2821, from the landmark decision of Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705 (1973), the Court ruled that it is constitutionally permissible for a state to require minor abortions to be conducted only after parental notification or parental consent has occurred, provided there exists acceptable judicial bypass alternatives. In Planned Parenthood of Central Missouri v. Danforth, the Court held that it is constitutionally impermissible for the state to place an absolute veto on a minor's abortion decision. See 428 U.S. 52, 74, 96 S. Ct.

2831, 2843 (1976) ("[T]he State may not impose a blanket provision . . . requiring the consent of a parent or person in local<sup>o</sup> parentis as a condition for abortion of an unmarried minor during the first 12 weeks of her pregnancy . . . . [T]he State does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the pregnancy, regardless of the reason for withholding the consent."); Accord, City of Akron v. Akron Center for Reproductive Health, Inc., 462 U.S. 416, 439, 103 S. Ct. 2481, 2497 (1983) (Akron I). However, even prior to Casey, the Court upheld parental consultation statutes (both parental consent and parental notification statutes) which contain judicial bypass procedures satisfying the standards of Bellotti v. Baird. See Bellotti v. Beard, 443 U.S. 622, 640-42, 99 S. Ct. 3035, 3046-47 (1979) (the majority of the Court indicating that a two-parent consent requirement would be constitutionally permissible if coupled with an appropriate judicial bypass procedure); see also Akron I, 462 U.S. at 439, 103 S. Ct. at 2497 ("the State's interest in protecting immature minors will sustain a requirement of a consent substitute, either parental or judicial"); Planned Parenthood Association v. Ashcroft, 462 U.S. 476, 491, 103 S. Ct. 2517, 2525 (1983) (same). Most recently in Casey, after substantially retreating from Roe v. Wade, the Court specifically ruled that a one-parent consent requirement with an alternative judicial bypass procedure is constitutional:

Our cases establish, and we reaffirm today, that a State may require a minor seeking an abortion to obtain the consent of a parent or guardian, provided that there is an adequate judicial bypass procedure. See, e.g., Akron II, 497 U.S. at \_\_\_, 110 S. Ct. at \_\_\_; Hodgson, 497 U.S. at \_\_\_, 110 S. Ct. at \_\_\_, Akron I, *supra*, 462 U.S. at 440, 103 S. Ct. at 2497; Bellotti, *supra*, 443 U.S. at 643-644, 99 S. Ct. at 3048 (plurality opinion). Under these precedents, in our view, the one-parent consent requirement and judicial bypass procedure are constitutional.

\_\_\_ U.S. at \_\_\_, 112 S. Ct. at 2832.

The judicial reasoning for upholding parental consent and parental notification requirements (with adequate judicial bypass procedures) finds its genesis in the Supreme Court's analysis of a child's limited rights and protections under the Constitution vis-a-vis an adult's rights and protections. For example, the Court has long recognized that "[a] child merely on account of his minority is not beyond the protection of the constitution." Bellotti v. Baird, 443 U.S. 622, 633, 99 S. Ct. 3035, 3043 (1979). As the Court ruled in In Re: Gault, 387 U.S. 1, 13, 87 S. Ct. 1428, 1436 (1967), "whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." Quoted in Bellotti, 443 U.S. at 633, 99 S. Ct. at 3043. Similarly, in Danforth, 428 U.S. at 74, 96 S. Ct. at 2843, the Court stated:

Constitutional rights do not mature and come into being magically only when one attains the state defined age of majority. Minors, as well as adults, are protected by the constitution and possess constitutional rights.

Simply observing that minors are protected by the Constitution, of course, is but the beginning of the analysis in determining what parental consent and/or parental notification

requirements the State can impose as a precondition to a minor's abortion decision. The Supreme Court has long recognized that the status of minors under the law is unique in many respects. As Justice Frankfurter aptly put it: "[C]hildren have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a state's duty towards children." May v. Anderson, 345 U.S. 528, 536, 73 S. Ct. 840, 844 (1953) (concurring opinion). Also, as Justice Powell put it in Bellotti, "[t]he unique role in our society of the family, the institution by which we inculcate and pass down many of our most cherished values, moral and cultural, . . . requires that constitutional principles be applied with sensitivity and flexibility to the special needs of parents and children." 443 U.S. at 634, 99 S. Ct. at 3035, quoting, Moore v. East Cleveland, 431 U.S. 494, 503-504, 97 S. Ct. 1932, 1938, 1977 (plurality opinion). Specifically, the Court has recognized three reasons which justify the conclusion that the constitutional rights of children cannot be equated with those of adults: The peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner, and the importance of the parental role in child rearing. Bellotti, 443 U.S. at 644, 99 S. Ct. at 3043. "[P]arent notice and consent are qualifications that typically may be imposed by the State on a minor's right to make important decisions. As immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences, a State reasonably may determine that parental consultation often is desirable and in the best interest of a minor." Bellotti, 443 U.S. at 640, 99 S. Ct. at 3046.<sup>1</sup> Each of these reasons have amplified significance in the case of a minor woman considering the dramatic decision of whether to abort her unborn child. See Id.; Casey \_\_\_ U.S. at \_\_\_, 112 S. Ct. at 2832. Accordingly, the State may determine, as a general proposition, that such consultation is particularly desirable with respect to the abortion decision, as it is one that for some people raises profound moral and religious concerns. Moreover, it is widely demonstrated that parental involvement in a minor's abortion decision, if compassionate and supported, is highly desirable. See Bellotti, 443 U.S. 642, n. 20, 99 S. Ct. at 3047, n. 20.<sup>2</sup>

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<sup>1</sup> In Danforth, 428 U.S. at 75, 96 S. Ct. 2844, the Court emphasized that its holding "[d]id not suggest that every minor, regardless of age or maturity, may give effective consent for termination of her pregnancy."

<sup>2</sup> The State's interest in a one-parent consent statute, such as Alaska's, is clear: it is to protect children from their own immaturity as well as from the possibly deficient advice of those whose business it is to provide abortions at profit. Such statutes are plainly constitutional provided they contain adequate judicial bypass provisions. Casey, \_\_\_ U.S. at \_\_\_, 112 S. Ct. at 2832; Ashcroft, 462 U.S. 476, 103 S. Ct. 2517. Ohio v. Akron Center for Reproductive Health (Akron II), 497 U.S. 502, 520, 110 S. Ct. 2972, 2984 (1990), Justice Kennedy eloquently expressed the interest of the State and the Family in requiring parental consent as a precondition to a minor's abortion:

It is both rational and fair for the State to conclude that, in most instances, the family will strive to give a lonely or even terrified minor advice that

In the abortion context, parental involvement statutes may be divided into four groups, in ascending order of the burden which they impose on the minor's exercise of her limited right to an abortion: One-parent notification statutes, two-parent notification statutes, one-parent consent statutes, and two-parent consent statutes. The Supreme Court upheld a one-parent notification statute in H.L. v. Matheson, 450 U.S. 398, 101 S. Ct. 1164 (1981). The Court upheld a two-parent notification statute that includes a judicial bypass provision in Hodgson v. Minnesota, 497 U.S. 417, 110 S. Ct. 2926 (1990) (Kennedy, J. plurality opinion).<sup>3</sup> Finally, as stated above, the Court upheld a one-parent consent statute with a judicial bypass in both Casey, \_\_\_ U.S. at \_\_\_, 112 S. Ct. at 2832; and Ashcroft, 462 U.S. 476, 103 S. Ct. 2517. The only unanswered question, which at least arguably was answered in Bellotti v. Baird, is whether a two-parent consent statute with a judicial bypass impermissibly crosses the line so as to impose an undue burden on a minor woman's right to an abortion. See Casey, \_\_\_ U.S., 112 S. Ct. 2791.

In analyzing parental consultation statutes, the Court scrutinizes consent statutes more closely than it does notification statutes, and two-parent laws more closely than one-parent laws (simply because parental consent is viewed as being a greater burden on the right to choose an abortion from parental notification). Thus, a two-parent consent statute arguably raises more serious questions than the other parental involvement statutes. In Bellotti v. Baird, 443 U.S. at 636, 99 S. Ct. at 3045, a fractured court struck down a state law that required minors to obtain the consent of both parents before an abortion could be performed. The plurality opinion struck the law down on the grounds that the statute's judicial bypass provision was constitutionally inadequate. Bellotti, 443 U.S. at 645, 99 S. Ct. at 3049. However, the opinion clearly stated: "We are not persuaded that, as a general rule, the requirement of obtaining both parents' consent unconstitutionally burdens a minor's right to seek an abortion." Id. at 649, S. Ct. at 3051. In outlining the constitutional requirements for such a statute, the Court said: We therefore conclude that if the State decides to require a pregnant minor to obtain one or both parents' consent to an abortion, it also must provide an alternative procedure whereby authorization for the abortion can be obtained." Id. at 643, 99 U.S. at 3048 (emphasis added). Thus, if the two-parent consent statute at issue in Bellotti had contained an adequate judicial bypass, the four members of the plurality opinion stood ready to uphold it. A fifth, Justice White, was prepared

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is both compassionate and mature. The statute in issue here is a rational way to further those ends. It would deny all dignity to the family to say that the State cannot take this reasonable step in regulating its health professions to insure that, in most cases, a young woman will receive guidance and understanding from a parent.

<sup>3</sup> In Akron II, decided in tandem with Hodgson, the Supreme Court left open the precise question of whether parental notification statutes even require alternative judicial bypass provisions. 497 U.S. 502, 110 S. Ct. 2972.

to uphold the two-parent consent statute in Bellotti, even without a judicial bypass. Id. at 657, 99 S. Ct. at 3055 (White J., dissenting).

Although the Court in Bellotti did not uphold the two-parent consent statute at issue, it did indicate that it would do so under different circumstances. The indication given in Bellotti, that even a two-parent consent statute with an appropriate judicial bypass would be constitutionally permissible, is particularly persuasive in light of Justice Kennedy's plurality opinion in Hodgson, 497 U.S. at 498, 110 S. Ct. at 2970. There, Justice Kennedy relied on Bellotti to uphold a two-parent notice requirement. Justice Kennedy argued that since Bellotti approved a two-parent consent statute with a judicial bypass, it follows that the less onerous two-parent notice statute must be constitutional. Id. at 498, 110 S. Ct. at 2970. (Bellotti "requires us to sustain this statute before us here"). Justice O'Connor, also citing Bellotti, joined the plurality in Hodgson on the broad grounds that a bypass provision tailors "a parental-consent provision so as to avoid unduly burdening the minor's limited right to obtain an abortion." Id. at 461, 110 S. Ct. at 2950. (O'Connor, J., concurring). Thus, in Hodgson five justices (Rehnquist, White, O'Connor, Scalia, and Kennedy) viewed Bellotti, as settling the question in favor of the constitutionality of the two-parent consent/judicial bypass statute. See e.g., Barns, 992 F.2d at 1338-39.

For purposes of analyzing the constitutionality of the legislation which you propose to introduce to the Alaska Legislature, however, even if Bellotti is not directly controlling to approve a two-parent consent/judicial bypass statute, a one-parent consent statute (such as Alaska's current statute, AS 18.16.010 et. seq.) with a judicial bypass is unquestionably constitutional. See Casey, \_\_\_ U.S. at \_\_\_, 112 S. Ct. at 2832. The reason that a one-parent consent provision, with an adequate judicial bypass provision, is constitutional is because (1) the state is viewed as having an important interest at stake in encouraging or requiring parental involvement in a minor's abortion decision, and (2) the consent requirement, with an alternative judicial bypass, does not place an undue burden on the woman's right to choose an abortion. See Casey, \_\_\_ U.S. at \_\_\_, 112 S. Ct. at 2832.

The United States Supreme Court, and lower federal appellate courts, have both routinely recognized that the State does have an important interest at stake in parental involvement statutes. The State's interest, in part, is insuring that someone other than the immature minor and the abortion provider has a hand in making an important decision that fundamentally affects the minor's health and welfare. The Supreme Court has recognized that "the guiding role of parents in the upbringing of their children justifies limitations on the freedom of minors. Bellotti, 443 U.S. at 637, 99 S. Ct. at 3045. The Supreme Court has described the "belief that the parental role implies a substantial measure of authority over ones children" as being "deeply rooted in our nation's history and tradition." Id. at 638, 99 S. Ct. at 3045. "Legal restrictions on minors especially those supported by the parental role, may be important to the child's chances for the full growth and maturity that make eventual participation in our free society meaningful and rewarding. Id. at 638-39, 99 S. Ct. at 3046. Parental consultation is particularly important on the abortion decision, "one that for some people raises profound moral and religious concerns." Id. at 640, 99 S. Ct. at 3047. The child herself may be too immature

to make the decision. And the abortion provider cannot be counted on to provide "adequate counsel and support . . . at an abortion clinic, where abortions for pregnant minors frequently take place." Id. at 641, 99 S. Ct. at 3047.

The remaining consideration involves a determination of what constitutes an adequate judicial bypass procedure. Bellotti establishes four criteria which must be satisfied in any judicial bypass procedure:

1. The procedure must allow the minor to show that she possesses the maturity and information to make her abortion decision, and in consultation with her physician, without regard to her parents' wishes;
2. The procedure must allow the minor to show that, even if she cannot make the abortion decision by herself, the desired abortion would be in her best interest;
3. The procedure must insure the minor's anonymity; and
4. The Courts must conduct a bypass procedure with expediency to allow the minor an effective opportunity to obtain an abortion.

443 U.S. at 643-44, 99 S. Ct. at 3048; accord Akron II, \_\_\_ U.S. \_\_\_, 110 S. Ct. at 2979-80.<sup>4</sup>

With respect to the first Bellotti requirement, the Supreme Court has ruled that every minor must have the opportunity, if she so desires, to go directly to a Court to request judicial approval of her abortion decision without first consulting or notifying her parents. If the minor satisfies the Court that she is mature and well enough informed to intelligently make the abortion decision on her own, the Court must authorize her to act without parent consultation or consent. If the minor fails to satisfy the Court that she is mature or competent enough to make the

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<sup>4</sup> Justice Powell stated specifically in Bellotti that: "A pregnant minor is entitled in such a proceeding to show either: (1) that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents' wishes; or (2) that even if she is not able to make the decision independently, the desired abortion would be in her best interest. The proceeding in which this showing is made must assure that a resolution of the issue, and any appeals that may follow, will be completed with anonymity and sufficient expedition to provide an effective opportunity for an abortion to be obtained. In sum, the procedure must insure that the provision requiring parental consent does not in fact amount to the absolute, and possibly arbitrary, veto that was found impermissible in Danforth." 443 U.S. at 644, 99 S. Ct. at 3048.

abortion decision independently, she must be permitted to show that an abortion, nevertheless, would be in her best interest. This leads, in essence, to the second Bellotti requirement.

With respect to the second Bellotti requirement, the Supreme Court has recognized that there is an important State interest in encouraging a family rather than a judicial resolution of a minor's abortion decision. Furthermore, the Court has observed that parents naturally take an interest in the welfare of their children, an interest that is particularly strong where a normal family relationship exists and where the child is living with one or both of the parents. With respect to the second Bellotti criteria, the Court's independent determination of whether an abortion is in the best interest of the minor child regardless of her immaturity or lack of information, the Supreme Court has specifically ruled that it is proper for a Court to take into account the importance of family involvement in such an important decision for the minor. Under the second Bellotti criteria if, all things considered, the Court determines that an abortion is in the minor's best interest, she is entitled to Court authorization without any parental involvement." However, the Supreme Court has indicated that a Court may deny the abortion request of an immature minor in the absence of parental consultation if it concludes that her best interests would be served through parental consultation. It is also permissible, in such a case, for the Court to defer its decision until there is parental consultation in which the Court may participate. According to the Supreme Court in Bellotti, "this is the full extent in which parental involvement may be required." 443 U.S. at 648, 99 S. Ct. at 3051.

## II. Alaska's Constitutional Right to Privacy.

In Breese v. Smith, 501 P.2d 159 (Alaska 1972), the Alaska Supreme Court stated the tests which are to be applied when a claim is made that state action encroaches upon an individual's constitution rights. In Breese, the Court had before it a "hairlength" regulation which encroached on what the Court determined to be the individual's fundamental right to determine his own personal appearance. In that case, the Court stated:

Once a fundamental right under the Constitution of Alaska has been shown to be involved and it has been further shown that this constitutionally protected right has been impaired by governmental action, then the government must come forward and meet its substantial burden of establishing that the abridgement in question was justified by a compelling government interest.

501 P.2d at 171.<sup>5</sup> This standard, established in Breese, is similar to the federal protection for the U.S. Constitutional Implied Right of Privacy existing prior to Casey, \_\_\_ U.S. \_\_\_ 112 S. Ct. at 2821.

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<sup>5</sup> See also State v. Wylie, 516 P.2d 142 (Alaska 1973); State v. Van Dellen, 502 P.2d 453 (Alaska 1972); Gray v. State, 525 P.2d 524, 527 (Alaska 1974); Gilbert v. State, 526 P.2d 1131, 1133 (Alaska 1974); State v. Adams, 522 P.2d 1125 (Alaska 1974).

In 1972, the Alaska Constitution was amended to add Article I, § 22, which states an express right of privacy to Alaska citizens. Article I, § 22 reads:

The right of the people to privacy is recognized and shall not be infringed.  
The legislature shall implement this section.

In Ravin v. State, 537 P.2d 494 (Alaska 1975), the Alaska Supreme Court ruled that "[t]he effect of this amendment is to place privacy among the specifically enumerated rights in Alaska's Constitution." Accordingly, in Ravin, the Alaska Supreme Court determined that the right of privacy guaranteed by Article I, § 22 of the Alaska Constitution is a fundamental right which can only be infringed by the state upon a showing of a compelling government interest. Although in Ravin the Alaska Court determined that private marijuana use outside the home did not fall within the scope of the privacy interests protected by Article I, § 22, there is little doubt that the Alaska Supreme Court, consistent with the United States Supreme Court's decision in Roe v. Wade, would determine that the right of a woman to choose to have an abortion is a privacy right protected by Article I, § 22. As a result, there is little doubt that the Alaska Supreme Court would recognize a woman's right to choose to have an abortion as a fundamental right protected by the Alaska Constitution, principally Article I, § 22.

Since 1975, the Alaska Supreme Court has consistently ruled that the government must demonstrate a convincing and compelling interest, which the government must seek to implement through the least restrictive means available, in order to justify infringement upon the fundamental right to privacy guaranteed by Article I, § 22, of the Alaska Constitution. For example, in Matter of A.B., 791 P.2d 615 (Alaska 1990), the Alaska Court ruled as follows:

Although neither federal nor state rights of privacy are absolute, it is part of the judicial function to insure the governmental infringements of privacy are supported by sufficient justification. Under federal precedent, it must be found that the privacy invasion is necessary to a compelling state interest, and that the government regulation does not sweep too broadly.

See, e.g., Griswold, 381 U.S. at 485, 85 S. Ct. at 1682; Roe v. Wade, 410 U.S. 113, 155, 93 S. Ct. 705, 727, 35 L. Ed. 2d 147 (1973); Carey, 431 U.S. at 687, 97 S. Ct. at 2016. Under the Alaska Constitution, the required level of justification turns on the precise nature of the privacy interest involved. In absence of a suspect classification or impairment of a fundamental right, we have required that there be a fair and substantial relation between the means chosen for a legitimate governmental purpose. Issakson v. Rickey, 550 P.2d 359, 363 (Alaska 1976). Where fundamental rights are at stake, the State's interest invading privacy must be compelling. Id. Thus, to determine the validity of the release work, we must consider both the nature and the extent of the privacy invasion, and the strength of the State interest or requiring disclosure. See

generally Falcon v. Alaska Public Offices Commission, 570 P.2d 469,  
475 (Alaska 1977).

Id. at 621. Accord Luedtke v. Nabors Alaska Drilling, Inc., 768 P.2d 1123, 1129 (Alaska  
1989).

Consistent with the United States Supreme Court precedent addressed above, it should be recognized by the Alaska Supreme Court that the State has a compelling interest to insure the protection of minor children in the context of their making important decisions, such as the decision to abort an unborn child. The key to guaranteeing the enforceability of a parental consent statute under Alaska's Constitutional Privacy Provision, therefore, would seem to be in drafting the parental consent provisions so as to implement the state's compelling interest in the least restrictive means possible to the minor woman's right to choose. Including within your proposed legislation, a judicial bypass procedure which is consistent with U.S. Supreme Court precedent as detailed above, would implement the State's compelling interest in the least restrictive means possible.

### CONCLUSION

A one-parent consent requirement as a precondition to a minor's abortion is constitutionally permissible provided the statute contains an alternate judicial bypass procedure. To be constitutionally adequate, a judicial bypass procedure must allow the minor to obtain court approval of her abortion decision, independent of her parent's involvement, upon a showing that either (1) she is independently mature and informed enough to make her own abortion decision, or (2) that the abortion is otherwise in her best interests. The procedure must be conducted expediently and so as to preserve the minor's anonymity. Examples of statutes from other states are enclosed as is a redrafted proposed bill.

JEFFERY D. TROUTT  
2007  
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March 20, 1995

Via Facsimile Transmission  
Alaska State Senate  
State Capital  
Room 113  
Juneau, AK 99801

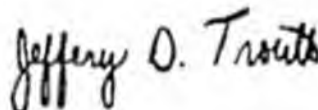
Re: S.B. 105

Dear Senator Leman:

I intended to testify today regarding S.B. 105. Unfortunately, I have a sick child, and must stay home and care for her at least part of the day. I am therefore sending you my testimony via fax, and would appreciate it if you would see that it is distributed to the other committee members and is made part of the record.

Thank you very much.

Sincerely yours,



Jeffery D. Troutt

JDT/ms

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## TESTIMONY OF JEFFERY D. TROUTT CONCERNING SB 105

My name is Jeffery D. Troutt. I am a Juneau attorney in solo practice. I am here to speak to the constitutionality of SB 105 under the privacy clause of the Constitution of Alaska. SB 105 would prohibit physicians from performing abortions prior to obtaining the consent of parents, guardians, or the courts. I believe that this bill, if it becomes law, would pass muster under Alaska constitutional law, and the right to privacy enumerated in art. 1, § 22 of the Alaska Constitution, as currently interpreted by the Supreme Court of Alaska.

The right to privacy may best be described as "the right to be left alone". Both the federal and state constitutions give a measure of protection to the privacy of individuals. However, federal and state courts have been careful not to apply the right to privacy in a manner that restricts government from performing its essential functions or enforcing important public policies that may impinge on an individual's privacy.

### FEDERAL PRIVACY LAW

The Constitution of the United States does not enumerate a right to privacy. The word "privacy" does not appear in the Constitution. However, the Supreme Court of the United States has found that a right to privacy exists in the Constitution, and derives from a broad reading of the due process clause of the 14th Amendment. *Carey v. Population*

*Services International*, 431 U.S. 478, 684, 97 S.Ct. 2010, 2015, 52 L.Ed.2d 675 (1977). The right has also been held to exist as a result of "emanations" from other constitutional provisions, e.g. *Griswold v. Connecticut*, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965). Governmental intrusions of privacy are allowed where there is a compelling state interest and that regulation does not sweep too broadly. *Id.*, at 381 U.S. 485, 85 S.Ct. 1682; *Roe v. Wade*, 410 U.S. 113, 115, 93 S.Ct. 705, 727, 35 L.Ed.2d 147 (1973); *Carey*, at 431 U.S. 685, 97 S.Ct. 2016.

### ALASKA PRIVACY LAW

Unlike the federal constitution, the Alaska Constitution explicitly grants the right to privacy in Art. I, § 22. Alaska is one of a few states that have such a provision. The Supreme Court of Alaska has held that the state's right to privacy is broader than the right to privacy that the Supreme Court of the United States recognized in the cases cited above. *State v. Glass*, 583 P.2d 872, rehearing 596 P.2d 10 (Alaska 1978).

The court's analysis of privacy rights hinges upon an examination of the importance of the right claimed, and the government's interest in the action infringing upon privacy.

The court has said:

Under the Alaska Constitution, the required level of justification turns on the precise nature of the privacy interest involved. In the absence of suspect classification or impairment of fundamental rights, we have required that there be a 'fair and

substantial relation' between the means chosen and a legitimate governmental purpose. *Isakson v. Richey*, 550 P.2d 359, 363 (Alaska 1976). Where fundamental rights are at stake, the state's interest in invading privacy must be compelling.

*Matter of A.B.*, 791 P.2d 615, 621 (Alaska 1990).

The court has set limits to governmental invasion of privacy. "No governmental intrusion on the privacy of citizens should be broader or more intrusive than necessary to accomplish the government purpose that justifies it." *Municipality of Anchorage v. Ray*, 554 P.2d 740, 750 (Alaska 1993). Thus, the court will allow government to invade personal privacy, but it must do so only to the extent required to accomplish the legitimate governmental purpose.

The Supreme Court of Alaska reviewed the right to privacy as applied to a minor child in *Matter of A.B.*, 791 P.2d 615 (Alaska 1990). There, the court upheld the right of a parent to information held by HESS. The court recognized the preeminent importance of preserving the family structure, despite the father's admitted neglect and addition to drugs, and the agency's expressed interest in preserving the privacy of certain information. The court stated that, to facilitate an expeditious and comprehensively monitored reunion of A.B. [a minor female] and her father, and to preserve the potential for a normal relationship between them, are legitimate State interests substantially effectuated by the release order [requiring the State to release information regarding the child to parties interested in the outcome of the case]." *Id.*, at 791 P.2d 622.

I have found one case where the court discusses the privacy interest of minors in preventing the disclosure of information about their obtaining an abortion. In *Falcon v. Alaska Public Offices Commission*, 570 P.2d 469 (Alaska 1977), the court prevented application state election law requiring a physician to disclose the names of patients from whom he had received over \$100 in payment. The court stated that a physician specializing in contraceptive or abortion services, or a general practitioner providing abortion or contraceptive services to a minor, should not be required to disclose the names of patients. This because the patients' privacy interests outweighed the public interest in promoting fair and honest government by requiring disclosure of a candidate's sources of income. *Falcon*, at 791 P.2d 622-623.

The *Falcon* case turned upon the potential public disclosure of information concerning intimate details of patients' lives. SB 105, on the other hand, deals only with private disclosure of information to parents concerning the health of minor children. As noted above, the court has recognized the importance of the parent/child relationship, and has been willing to sacrifice privacy interests in favor of supporting and maintaining that relationship. (Indeed, the court, while not deciding the constitutionality of similar provisions in the law, the court has displayed deference towards legislative policy in this area. See, e.g., *Cleveland v. Municipality of Anchorage*, 631 P.2d 1073 (Alaska 1981) and *Bird v. Municipality of Anchorage*, 787 P.2d 119 (Alaska 1990).)

Based upon the principles enumerated in the case law, I believe that the Supreme

Court of Alaska would hold that SB 105 does not violate the constitutional rights of minor children. Although the court may find that a fundamental right to abortion is implicated by the bill, see *Roe*, above, it would probably also find that there is a competing fundamental right of parents to be involved in decisions concerning minor children. See, *Matter of A.B.*, above.

In addition, as a matter of policy, the court would surely agree with the legislature that parents are more able than government to help minor children make a choice regarding abortion, and that it is in the best interests of minor children to have their parents involved in this decision.

Those rare instances where parental involvement would not be in a child's best interests are covered by the judicial by-pass allowing minors to obtain abortions against their parents' consent under certain circumstances. This will not only help the bill pass constitutional muster under federal law, it will likely persuade the Alaska court that the bill protects the privacy interests of minor children in the least obtrusive manner possible.

## CONCLUSION

Abortion is a highly personal decision with profound moral, emotional, and spiritual ramifications. I believe that the court would recognize that it is a decision that most minors should not make without involving the people best equipped to help them make that

decision, and most concerned for their welfare — the minor's parents. For this reason, and the reasons expressed above, I believe that it is likely that the Supreme Court of Alaska would hold that SB 105 is constitutional under the Constitution of Alaska.

# Constituent Contact Sheet

NAME: STEPHANIE BENSON  
ADDRESS: 1414 HELEN DR. NW  
ALBANY GA 31706

DATE: 3/21/95

PHONE: 345-7393

S.S.N.: \_\_\_\_\_

REGARDING: SB 105 - PARENTAL CONSENT  
PASS - SUPPORT

ACTION TAKEN: \_\_\_\_\_

RESPONSE TO CONSTITUENT: \_\_\_\_\_

Senator Green.



# Alaska State Legislature

Please enter into the record my testimony to the Senate HESS  
committee name

committee on SB 105, dated March 20, 1995  
bill/subject

I OPPOSE SB105. IT IS NOT THE GOVERNMENT'S ROLE TO INTERFERE OR DICTATE DECISIONS ABOUT A YOUNG WOMAN'S BODY. IT IS NOT THE GOVERNMENT'S ROLE TO CONTROL RELATIONSHIPS BETWEEN PARENTS AND YOUNG WOMEN. IT CANNOT BE ASSUMED THAT MINOR WOMEN ARE IMMATURE OR INCAPABLE OF MATURE JUDGMENT. NEITHER CAN IT BE ASSUMED THAT ALL MINOR WOMEN ARE PART OF A VIABLE FAMILY STRUCTURE EVEN IF UNEMANCIPATED.

Signed: Malinda Thompson (MALINDA THOMPSON)  
Testifier

Representing (Optional)  
PO BOX 1542, HOMER, AK 99603  
Address  
235-4214  
Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the Senate HESS  
committee name

committee on SB 105, dated March 20, 1995.  
bill/subject

I hear alot of talk about apple and oranges regarding SB 105. Involved caring, loving, parents will always be allowed to assist their pregnant teen. That teen will use their parent as a confidante. SB 105's Failure is providing safty (emotionally + physically) for the teenage girl who does not have support in the home with their parents.

Providing a judge in a sterile court room as a monitor for a pregnant teen without mental/emotional support is cold and like sending her an Alien from Mars.

Signed:

Testifier

Adri Hagarty (Self)

Representing (Optional)

P.O. Box 737 Homer AK

Address

235-6410

Phone No.

March 20, 1999  
7030 Foothill Drive  
Anchorage, AK 99504

Senator Lyda Green  
State Capitol  
Juneau, Alaska 99801 - 1182

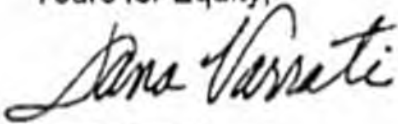
Dear Senator Green,

Please find attached a letter addressed to Senator Leman regarding his bill SB 105. I know this bill was heard in your committee this morning. I was unable to attend the teleconference because of my work schedule.

I am very concerned about the onslaught of bills (your own included) directed at controlling the lives of young women. I ask you to think about applying to young men the same standards contained in many of these "reform" bills. Do you believe the support from your male colleagues would be as strong for those kinds of equal reform measures?

Please keep this in mind when you have bills drafted, hear them, and accept or reject amendments. The young males of Alaska and their parents must learn that they are equally responsible for procreation and caring for their subsequent issue

Yours for Equity,



Jana Varrati

Post-it Fax Note	7671	Date	3/20	# of pages	2
To	Sen. Green	From	T. Haccatt		
Co Dept		Co			
Phone #		Phone #	333-0719		
Fax #	465-3805	Fax #			

March 20, 1995  
7030 Foothill Drive  
Anchorage, AK 99504

Senator Loren Leman  
State Capitol  
Juneau, Alaska 99801 - 1182

Dear Senator Leman,

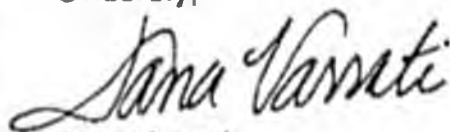
I am truly dismayed by the continued attack on young women represented by your bill, SB105. You have been a legislator for many years and surely have heard hours of testimony to the fact that many pregnant teenagers feel they cannot speak to their parents about their pregnancy. Even in the most open of homes, teen girls almost never speak to even their mothers about intimate personal things like menstruation, let alone the possibility of pregnancy. They talk to their friends about their problems. And, as you should know, some of those teenagers are pregnant by a parent! "Daddy, will you sign your permission for an abortion so Mom won't know you've been visiting my room every night for the past five years?"

To believe that this problem is solved by providing for judicial bypass is amusing. If girls are uncomfortable talking about the situation with a parent, why, in heaven's name, would they be comfortable being put under the scrutiny of a perfect stranger in black robes asking very personal questions?

As you can tell, I am very angry with you and your cohorts for your sanctimonious stands on issues involving young women: cut off their public assistance; sign a Personal Responsibility Contract; deny them a PFD; cut their Medicaid services; make them live with a parent or in a foster home (please make sure you read the Sunday Anchorage Daily News articles about the DFYS audit).

And, just exactly what are you "boys" doing about legislating against your own? I don't see any of these actions taken against young women being applied to the young men who impregnated them. There's nothing in any bill requiring the parents of an impregnator to house him and be responsible for sharing doctor and hospital bills with the impregnee's parents, or to pay child support for his offspring, or deny him a PFD, Driver's License, or an education, to sign a Personal Responsibility Contract, to snip his vas deferens until he learns to control the organ in which it is housed.

Sincerely,



Jana Varrati

cc: Members of Senate HSS Committee

## ROBIN SMITH

*RE: SB105*

I wish that there were fewer abortions, but I do not believe that we can legislate abortion into extinction.

Men participate in sexual intercourse, but it is usually the women who suffer the consequences. 30% of fathers of babies born to girls under 16 are men in their 20's or older. The condom is the only cheap, easy to use, effective, safe and nonprescription method of contraception and it is the male partner who must choose to use it. Rape and incest force women into potential pregnancy.

We cannot legislate good family communication and interaction. Human beings commit dangerous acts when they feel trapped. A young woman recently gave birth to a child. Fearing her parents reprisals, she chose to drown her newborn. Other young women died as the result of illegal abortions. This bill you propose does nothing for prevention but steps in to delay and potentially complicate the situation.

If we want to make a difference, perhaps we should do the following:

- Encourage more parental involvement in our children's lives
- Be better role models and set a proper example.
- Reduce television time.
- Don't go to movies or watch television that glorifies sex between unmarried adults.
- Destroy and denounce the image of "A Real Man" who has intimate relations with as many women as possible.
- Make men as responsible for child rearing and financial support as we do women.

Do not be in denial. Abortion is merely a symptom of the larger problem of unwanted pregnancy. Let's prevent these pregnancies, not complicate the situation. Let's work together to find solutions to the real problem.

*Robin Smith*  
14100 GARVI DRIVE  
ANCHORAGE, AK 99515

*3/20/95*

MAR 21 1995



# Alaska State Legislature

Please enter into the record my testimony to the Senate HES  
committee name

committee on SB 105 . dated 3/20/95  
bill/subject

MAR 20 1995

Page 1 of 2

WRITTEN TESTIMONY IN SUPPORT OF SB 105

I am writing in support of Senate Bill SB105 and would like to see it passed for two reasons One is that I feel it is important that parents of teens should know and have a say in whether to terminate their child's pregnancy or not. Secondly i feel as a teen it is important to let the parents know what is going on with their child and preborn grandchild I am asking you as a representative of Alaska and its people to please support this bill Thank you for your time

*Brian L. Kokke*

BRIAN KOKKE

VOTER

AGE 18

P.S. Please enter into the record my written testimony of Senate bill SB105 an act stating the parental consent of a minor seeking an abortion.

*Brian Kokke*

3-20-95

63100 GROFF St.  
SITKA AK 99835  
(907) 966-2570

MAR 20 1995



# Alaska State Legislature

Please enter into the record my testimony to the Senate HES  
 committee name  
 committee on SB 105 , dated 3/20/95  
 bill/subject

### WRITTEN TESTIMONY ON SB 105

I am writing to ask the Legislature to support SB 105 which upholds the requirement of parental consent in the case of an unemancipated minor seeking an abortion. This bill is necessary to support family unity and protect and support a minor in making this momentous decision. I feel it will allow parents to be more involved in their children's lives by supporting them in this critical time and helping them to make a difficult decision. The family unit and value system is chiseled away enough in our society by the media and externals that parents have no control over. Please support this piece of legislation that strives to uphold the family unit and allow parents to have a say in this vital decision that will follow their children all their lives no matter what decision is made.

Thank you for your time

*Beverly J. Kokke*

Beverly J. Kokke

Signed: *Beverly J. Kokke*  
 Testifier  
N/A  
 Representing (Optional)  
631 DeGross Sitka AK 99835  
 Address  
966-2570  
 Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the Senate HES  
 committee name  
 committee on SB 105, dated 3/20/95  
 bill/subject

### WRITTEN TESTIMONY ON SB 105

We the Sitka Pro Life Coalition are writing in support of SB 105 which upholds the requirement of parental consent in the case of an unemancipated minor seeking an abortion. We feel in every abortion decision there are two lives to be considered. This bill is necessary to protect a minor from their immaturity at a time when they are in crisis. By ensuring parental involvement in the consent form we feel you will be strengthening the family unit and giving parents a chance to support both their children and grandchildren. Please support this piece of legislation that strives to uphold the family unit and allow parents to be involved in their minor children's critical decisions.

Thank you for your time.

*Beverly J. Kokke, Secretary*

Sitka Pro Life Coalition  
Beverly J. Kokke, Secretary

Signed: *Beverly J. Kokke*  
 Testifier  
*Sitka Pro Life Coalition*  
 Representing (Optional)  
*P.O. Box 2466*  
 Address  
*message - 966-2570*  
 Phone No.

MAR 20 1995



# Alaska State Legislature

Please enter into the record my testimony to the SHES  
 committee name  
 committee on SB # 105 dated 3/20/95  
 bill/subject:

I would like to say I am ~~opposed~~ <sup>supporting</sup> SB # 105. Parents have the right to know what is happening to their children. If they have to have parental permission to take aspirin at school. It seems a surgical procedure such as an abortion. I am and other CPC's across the nation deal with these post-abortion victims on a daily basis. Ifs there are those both women who have had the abortion and also the man or family this effect. I would ask that the now-standing law be enforced to the fullest. Because it's been →

Signed: Ex. Director Kathy P. Ball  
 Testifier

SBC Crisis Pregnancy Center  
 Representing (Optional)

508 S. Willow St. Kenai Alaska  
 Address '99611

1-907-283-9062  
 Phone No.

reported to me that it is not  
enforced in most cases. The  
Care Net Crisis Centers across the  
Nation & Canada is trying to help  
these girls and encouraging them  
to include their parents in on  
this decision with counseling.

03-20-95

I ENDORSE SB-105 PROPOSED BY SENATOR  
LOREN LEMAN.

AS A 43 YEAR OLD POST-ABORTION WOMAN WHO  
STILL GRIEVES THE LOST CHILDREN OF MY YOUTH,  
I BELIEVE IT IS ETHICAL AND RESPONSIBLE  
REQUIRING MINORS TO REQUISITION ADULT  
AUTHORIZATION BEFORE TERMINATING THE LIFE  
OF THEIR CHILD. . . . SUPPORT SB-105.

*Teri Lundy*

TERI LUNDY  
P.O. BOX 2975  
SITKA AK 99835

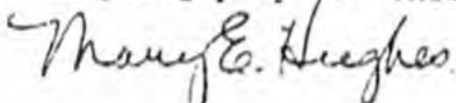
MAR 20 1995

TOTAL P.02

## WRITTEN TESTIMONY REGARDING SENATE BILL 105

I would like to affirm my support of Senate Bill 105 which provides for parental permission before a minor is able to have an abortion.

There is very convincing evidence that whenever the parental bonds are strenghtened; we then have more responsible behavior by the young people. This should always be our goal in legislation.



Mary E. Hughes

P.O. Box 912

Sitka, AK 99835 Residence: 1307 Halibut PT Rd.

March 20, 1995

To Senate HESS Committee

Thank you for giving me this opportunity speak on SB105, which would prevent a doctor from performing an abortion for an unmarried, unemancipated woman under 18 years of age unless certain conditions are met. These conditions, as you well know, concern parental or court consent for the procedure.

This law would expose young women from abusive or dysfunctional families to emotional trauma and physical danger. It has been found that when young women from these types of families do seek confidential abortions forced communication frequently has disastrous results. Parents may respond with physical or sexual abuse and in some cases the enraged father physically abuses both his daughter and her mother.

The American Psychological Association has found that minors are usually able to make intelligent, informed decisions about pregnancy. Even women from severely troubled families show great maturity and sensitivity when seeking confidential health services.

Court procedures are daunting for almost everyone. The process required to obtain court consent can be traumatic as the young woman may be required to reveal personal information to many people. In the process, in a small community, the information may get back to her parents. The resultant delay would increase the risk of harm. The longer the wait to terminate a pregnancy the greater the risk involved. Even so, the risk from abortion is less than the risk from childbirth and teenagers are more likely than adult to suffer medical complication from childbirth.

I request that you pass SB105 out of committee with a "do not pass" recommendation.

Thank you for you consideration of my concerns.

Alice Johnstone  
213 Shotgun Alley  
Sitka, Alaska 99835



MAR 20 1995



# Alaska State Legislature

Please enter into the record my testimony to the Senate HES  
committee name

committee on SR 105 dated 3-20-95  
bill/subject:

I am opposed to Senate Bill 105. Having worked as a high school counselor for a number of years I found that when a teenage female became pregnant the emotional trauma was very intense. If she had caring & loving parents, she had no qualms about working with them. But a number of these young women were justly concerned for their safety by sharing this information with their parents.

This bill would force many of these young women to seek unsafe avenues for back alley abortions. Concentrating on education to prevent pregnancy would be more useful & appropriate. Possibly a bill to require parental consent before a teenager can become sexually active would be

would be more appropriate.

Signed: Richard W. Wainwright  
Testifier

Representing (Optional):  
35985 Pioneer Drive Soldotna

Address  
262-9833

Phone No.

P.S. I am also disappointed speakers were not limited to 5 minutes as you gave an excellent guideline. During in to our LTO office please

## SPONSOR STATEMENT

DATE: March 15, 1995

FROM: Senator Loren Leman

RE: Senate Bill 105  
Judicial Bypass of Parental Consent Requirement for  
Minor Seeking an Abortion

\*\*\*\*\*

Senate Bill 105 will help young pregnant women seek parental guidance for one of the most important decisions they will make. Even an ambulance service seeks parental consent before treating a minor. It is inconsistent not to apply that parental oversight to one medical procedure.

It is incongruous that a parent must give permission for children to have their ears pierced or get prescription medicines, but is not required to be informed by a doctor about serious surgery like abortion.

Although Alaska law has required parental consent for a girl under 18 to have an abortion since 1970, the law has not been enforced for the past 20 years. Providing an alternative mechanism for a pregnant young woman to get consent from the court, instead of one of her parents, satisfies the requirements of the U.S. Supreme Court and Alaska's privacy provision. Unfortunately, these requirements also provide a large loophole for minors who want an abortion without parental consent.

Parental involvement legislation in other states, including Pennsylvania, Minnesota, Michigan and Ohio, has reduced the number of abortions among teenage girls by up to 27 percent. Twenty-two states now enforce requirements for parental involvement in minor girls' abortion decisions.

Recent polling shows that 74 to 80 percent of adults support a parental right to be involved in abortion decisions of their minor daughters. Many people are surprised to learn that this provision of law is not now enforced in Alaska.

Although this legislation will not be a cure-all for the devastating impacts of abortion on demand, it will help, and is a big step in encouraging parental participation.

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. SB 105

Revision Date: \_\_\_\_\_  
 Title: An Act relating to the requirement that a parent, guardian or custodian consent before a minor receives an abortion.  
 Sponsor: Sen. Leman  
 Requestor: Senate HES

Department Affected: Administration  
 BRU: Office of Public Advocacy  
 Component: Office of Public Advocacy  
 COMPONENT SERIAL NO. 43

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	112.0	112.0	112.0	112.0	112.0	112.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>112.0</b>	<b>112.0</b>	<b>112.0</b>	<b>112.0</b>	<b>112.0</b>	<b>112.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	112.0	112.0	112.0	112.0	112.0	112.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
<b>TOTAL</b>	<b>112.0</b>	<b>112.0</b>	<b>112.0</b>	<b>112.0</b>	<b>112.0</b>	<b>112.0</b>

Estimate of any current year (FY 95) cost: \$ 0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary.)

The judicial bypass positions of this bill contemplate a hearing at which an unemancipated minor may seek the court approval of her wish to have an abortion. Section 3 of the bill mandates the appointment of a guardian ad litem to "protect the interest of the complainant at the hearing that is held under this section."

The section continues to require the appointment of an attorney and further that if the guardian ad litem is an attorney, "the court may also appoint the guardian ad litem to serve as the complainant's attorney."

Prepared by: Brant McGee, Public Advocate  
 Division: Office of Public Advocacy

Phone: 274-1684  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Administration

Date: 3-17-95

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## FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. SB 105

### ANALYSIS: (continued)

While no provision of the bill identifies a particular source for guardians ad litem or attorneys, it is presumed that the Office of Public Advocacy (OPA) would be required to provide guardians ad litem in this, as it is in all other proceedings. Guardians ad litem cannot serve as attorneys for the same person in the same case. Nearly all OPA guardians ad litem are non-attorneys.

The fiscal note is based on the following assumptions:

1. 2,400 abortions per year are performed in Alaska;
2. 12 percent of abortions per year (288) are performed on women aged 17 or younger; and
3. 39 percent of young women (112) wishing to obtain an abortion would seek a judicial bypass, based on the fact that 61 percent of parents are informed of abortions in those states which do not require parental notice or consent.

Thus, OPA could be expected to provide guardian ad litem representation to 112 young women each year in judicial proceedings in which the minor sought to obtain approval for an abortion. The guardian ad litem representation in these cases would be short but intense. The Office of Public Advocacy estimates that such services would cost an estimated \$1,000.00 per case for a total of \$112.0 for each year.

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. SB 105

Revision Date: \_\_\_\_\_  
 Title: relating to parental consent before a minor  
receives an abortion; establishing a jud...  
 Sponsor: Senator Leman  
 Requestor: Senate HESS

Dept. Affected: Health and Social Services  
 BRU: Medical Assistance  
 Component: Medicaid-Facilities  
 COMPONENT SERIAL NO. 230  
 See also (SN#): \_\_\_\_\_

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGES IN REVENUES ( )						
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of any current year (FY95) cost:                     \$0.0

**ANALYSIS:** (Attach a separate page if necessary)

Enactment of this legislation would have very little impact on the funding of abortions by the Medicaid or General Relief Medical Assistance Programs. Very few abortions are funded under these programs for minors.

Prepared by: Nancy Weller, Med Assist Admin  
 Division: Medical Assistance

Phone: 465-3355  
 Date: 03/17/95

Approved by Commissioner: Karen Perdue, Commissioner  
 Agency: Department of Health & Social Services

Date: 3/17/95

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# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. SB 105

Revision Date: \_\_\_\_\_  
 Title: relating to parental consent before a minor  
receives an abortion; establishing a jud...  
 Sponsor: Senator Leman  
 Requestor: Senate HESS

Dept. Affected: Health and Social Services  
 BRU: Medical Assistance  
 Component: Medicaid Non-Facility  
 COMPONENT SERIAL NO. 229  
 See also (SN#): \_\_\_\_\_

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGES IN REVENUES						
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of any current year (FY95) cost: \$0.0

**ANALYSIS:** (Attach a separate page if necessary)

Enactment of this legislation would have very little impact on the funding of abortions by the Medicaid or General Relief Medical Assistance Programs. Very few abortions are funded under these programs for minors.

Prepared by: Nancy Weller, Med Assist Admin  
 Division: Medical Assistance

Phone: 465-3355  
 Date: 03/17/95

Approved by Commissioner: Karen Perdue, Commissioner  
 Agency: Department of Health & Social Services

Date: 3/17/95

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# State Parental-Involvement Statutes

States having parental-involvement laws

September 1994

State	Type	Citation	Status
Alabama	one-parent consent judicial bypass	Ala Code §26-21-2 (Supp. 1990)	in force
Alaska	one-parent consent	Alaska Stat §18.16.010 (1991)	constitutionality of §11.15.060 questioned, Op. Alaska att'y gen. (Oct. 21, 1976)
Arizona	one-parent consent judicial bypass	Ariz Rev Stat Ann §§36-2152, 36-2153 (1986 & Supp. 1991)	unconstitutional in <i>Planned Parenthood v. Neely</i> , No. Civ 89-489, TUC ACM (D. Ariz. Sept. 14, 1992)
Arkansas	one-parent notice 48-hour waiting period judicial bypass	Ark Code Ann. §§20-16-801 - 20-16-808 (Michie Supp. 1991)	in force
California	one-parent consent judicial bypass	Health & Safety §25958 (West Supp. 1991)	unconstitutional under Cal. Const. <i>AAP v. Lungren</i> , No. A058627 (Cal. Ct. App., June 30, 1994)
Colorado	one-parent consent	Colo Rev Stat §18-6-101(1) (1986 & Supp. 1990)	declared unconstitutional in <i>Foe v. Vanderhoof</i> , 389 F. Supp. 947 (D. Colo. 1975)
Connecticut	no law		
Delaware	one-parent consent	Del Code Ann. tit. 24 §1790(b) (1987 & Supp. 1990)	unconstitutional and unenforceable; attorney general statement of policy on March 27, 1977
District of Columbia	no law		
Florida	one-parent consent judicial bypass	1972 Fla. Laws 608, ch. 72-196 §3 (based on Model Penal Code §230.3 (1962))	unconstitutional under state constitution; see <i>In re T.W.</i> , 551 So. 2d 1186 (Fla. 1989)
Georgia	one-parent notice 24-hour waiting period 72-hour notice by mail judicial bypass	Ga. Code Ann. §§15-11-110-117 (Michie 1990 & Supp. 1991)	upheld in <i>Planned Parenthood Ass'n v. Miller</i> , 934 F. 2d 1462 (11th Cir. 1991), in force
Hawaii	no law		
Idaho	two-parent notice 24-hour waiting period	Idaho Code §18-609(6) (1987)	unenforced
Illinois	two-parent notice 48-hour waiting period judicial bypass	720 ILCS 520/1 et seq. (West 1992)	injunction continued in <i>Hartigan v. Zbaraz</i> , 776 F. Supp. 375 (N.D. Ill. 1991)
Indiana	one-parent written consent judicial bypass	Ind Code Ann. §§5-1-58.5-2.5 (West 1986 & Supp. 1991)	in force; see <i>In re T.H.</i> , 484 N.E. 2d 568 (Ind. 1985), <i>In re T.P.</i> , 475 N.E. 2d 312 (Ind. 1985)
Iowa	no law		
Kansas	one-parent notice judicial bypass eight-hour waiting period	K.S.A. 65-6705	enacted into law on April 23, 1992, in force

State	Type	Citation	Status
Kentucky	one-parent written consent judicial bypass	Ky. Rev. Stat. §311.732 (amended by S.B. 136, 1994 Sess.)	recently passed amendment, not yet challenged
Louisiana	one-parent consent judicial bypass	La. Rev. Stat. §1299:35.5 (West Supp. 1991)	constitutional in <i>Margaret S.v. Treen</i> , 597 F. Supp. 636 (E.D. La. 1984) <i>aff'd</i> 794 F.2d 994 (5th Cir. 1986), in force
Maine	adult family member or one-parent 24-hour notice, unless counselled by doctor 48-hour notice by mail judicial bypass	Me. Rev. Stat. Ann. tit. 22 §1597-A (West Supp. 1990)	in force
Maryland	one-parent notice waivable at physician's discretion	Mid. Health-Gen. Code Ann. §20-103(c)(1) (Supp. 1993)	in force
Massachusetts	two-parent written consent judicial bypass	Mass. Ann. Laws ch. 112 §125 (West 1983 & Supp. 1991)	preliminary injunction denied in <i>Planned Parenthood League of Massachusetts v. Bellotti</i> , 499 F. Supp. 215 (D. Mass. 1980), <i>aff'd</i> in part, vacated in part on other grounds and remanded, 641 F.2d 1006 (1st Cir. 1981), in force
Michigan	one-parent consent judicial bypass	Mich. Comp. Laws Ann. §722.901 et seq. (West Supp. 1991)	preliminary injunction denied in <i>Planned Parenthood of Mid-Michigan v. A.G. of Michigan</i> , No. D91-0571-AZ (Kalamazoo Co. Cir. Ct.), in effect during litigation
Minnesota	two-parent notice 48-hour waiting period judicial bypass	Minn. Stat. Ann. §144.343 (West 1982)	upheld in <i>Hodgson v. Minnesota</i> , 110 S.Ct. 2629 (1989), in effect August 1989
Mississippi	two-parent written consent judicial bypass	Miss. Code Ann. § 41-41-51 et seq. (Supp. 1989)	upheld in <i>Barnes v. Mississippi</i> , No. 92-7264 (5th Cir. May 27, 1993), cert. denied by U.S. Supreme Ct., 114 S.Ct. 468, in force
Missouri	one-parent written consent judicial bypass	Mo. Ann. Stat. §188.028 (Vernon Supp. 1991)	upheld in <i>Planned Parenthood Ass'n of Kansas City, Mo. v. Ashcroft</i> , 462 U.S. 476 (1983), <i>T.J. v. Webster</i> , 792 F.2d 734 (8th Cir. 1986), in force
Montana	one-parent notice	Mont. Code Ann. §50-20-107(b)	declared unconstitutional and permanently enjoined in <i>Wickland v. Salvagni</i> (U.S. Dist. Ct. Montana, Dec. 21, 1993) (CV93-92-BU-1FB)
Nebraska	one-parent 48-hour notice judicial bypass	1991 Neb. Laws No. 425 §11	in force
Nevada	one-parent notice judicial bypass	Nev. Rev. Stat. §442.255, 442.2555 (Michie 1986 & Supp. 1989)	unconstitutional in <i>Glick v. McKay</i> , 616 F. Supp. 322 (D. Nev. 1985), <i>aff'd</i> 937 F.2d 434 (9th Cir. 1991)
New Hampshire	no law		
New Jersey	no law		

State	Type	Citation	Status
New Mexico	one-parent consent	N.M. Stat. Ann. §30-5-1(C) (Miche 1984 & Supp. 1991); enacted 1969	unconstitutional under <i>Planned Parenthood v. Danforth</i>
New York	no law		
North Carolina	no law		
North Dakota	two-parent written consent judicial bypass	1981 N.D. Laws, ch. 164, § 1, 1985 N.D. Laws, ch. 334, § 2 (codified at N.D. Cent. Code, §14-02.1-03 1 (Supp. 1989))	in force
Ohio	one-parent 24-hour notice judicial bypass	Ohio Rev. Code Ann. §2919.12	upheld in <i>Ohio v. Akron Center for Reproductive Health</i> , 110 S.Ct. 2972 (1990); in force; as-applied challenge, rejected, <i>Cleveland Surgi-Center v. Jones</i> , 2 F.3d 686 (6th Cir. 1993), cert. denied, 114 S.Ct. 696 (1994)
Oklahoma	implied two-parent consent	Okl. Stat. Ann. tit. 63 §§ 2601, 2602	probably unconstitutional under <i>Planned Parenthood v. Danforth</i>
Oregon	no law		
Pennsylvania	one-parent informed consent judicial bypass	Pa. Cons. Stat. Ann. tit. 18 §3206, 3209 (Purdon 1983 & Supp. 1990)	upheld in <i>Planned Parenthood of Southeastern Pennsylvania v. Casey</i> , 112 S.Ct. 2791 inj. vacated by 3d Cir., January 1994; in force since February 8, 1994
Rhode Island	one-parent consent judicial bypass	R.I. General Laws §23-4-7-6 (1989)	in force
South Carolina	one-parent or grandparent consent judicial bypass	1990 S.C. Acts P.A. 341 (codified at S.C. Code Acts §44-41-30 et seq. (1991))	in force
South Dakota	one-parent notice 48-hour waiting period	HB 1131, 1993	temporary restraining order, <i>Planned Parenthood v. Miller</i> , CIV 93-3033
Tennessee	two-parent notice (CL interpreted it as one) 48-hour waiting period	§39-15-202(f) 1991, 1992, (enacted in 1989)	upheld by State Circuit Ct., <i>P.P. Assn. of Nashville, Inc. v. McWhirter</i> (November 19, 1992) (Docket No. 92C-1672); not enforced during litigation
Texas	no law		
Utah	two-parent notice (CL interpreted it as one)	Utah Code Ann. §76-7-304(2) (1990) (enacted in 1974)	upheld, <i>H.L. v. Matheson</i> , 450 U.S. 398 (1981), in force
Vermont	no law		
Virginia	no law		
Washington	no law		
West Virginia	one-parent 24-hour notice 48-hour notice by mail judicial bypass	Laws 1984, ch. 1, codified at §16-2F-1 et seq., W.Va. Code Ann. (1991)	in force

State	Type	Citation	Status
Wisconsin	one-parent or adult family-member consent judicial bypass	1991 WI Act 263	enacted into law on May 2, 1992; in force
Wyoming	one-parent 48-hour written notice and consent judicial bypass	Wyo Stat. §35-6-118 (Supp. 1989)	in force

For further information contact Americans United for Life.  
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(continued from previous page)

What America believes:

By 51% to 42%, oppose federal funding of Medicaid abortions (*Newsweek* poll, April 1993)

80% favor requiring parental notification (March 1992 *Washington Post* poll)

What the FOCA does:

The Senate bill (S. 25) currently contains an "exception" to allow states to refuse to pay for abortions, but this "exception" is opposed by NOW and the ACLU. These pro-abortion groups approve of the House bill (HR 25), which contains no such exception, and thus would require all states to fund abortions with state funds.

Both the House and Senate bills would nullify all current laws that require parental consent or at least notification before an abortion can be performed on a minor. The FOCA would require that every state give every minor the absolute right to consult with a "responsible adult" of her choosing, rather than a parent or judge!

For copies of the current versions of HR 25 and S. 25, or further information or documentation on the "Freedom of Choice Act," contact:

NRLC Federal Legislative Office  
(202) 626-8820, (301) 502-1170  
fax (202) 347-3668

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# national RIGHT TO LIFE

committee, inc.

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## The Lack Of Parental Involvement: Real Consequences

The personal experiences of Dawn Ravenell, Rachel Ely, Myoshi Callahan, Holly Trimble, and Teresa Wibblesman Fangman are testaments to the very real tragedy that a decision made without the benefit of parental involvement can become for a teenager who is confronted with the frightening and stressful fact of an unexpected pregnancy. Their experiences illustrate all too well some of the physical, emotional, and psychological dangers to the adolescent who makes the abortion decision without any parental involvement.

Dawn Ravenell, a 13-year-old girl from Queens, New York, died tragically in 1985 after undergoing a legal abortion. According to the abortion clinic records, Dawn awoke from the anesthesia during the middle of the abortion and began gagging and choking before going into cardiac arrest. A plastic airway was inserted in her throat and she was again sedated. In the recovery room after the abortion, she awoke, began gagging on the unremoved airway, and went into cardiac collapse. She was rushed to a New York hospital where she later died. In 1990, a jury awarded \$1.225 million dollars to her family. The Ravenell's said they pursued the suit not for the money but for justice. "I wanted to be sure that another child would not suffer the way Dawn did," Mrs. Ravenell said.

New York has no parental involvement law so Dawn's parents were never told about their daughter's pregnancy or abortion. "It was a horrible situation," said the family attorney, Thomas Principe. "Here you have a frightened kid in what was really an abortion factory. She was treated like a piece on an assembly line."<sup>1</sup>

Rachel Ely was a 17 year-old, unmarried high school student who was afraid to tell her parents that she was pregnant. Rachel had an abortion on the advice of a high school counselor without her parents' knowledge. Several days after the abortion, Rachel became quite ill and went to another doctor. Thinking the symptoms were not related, she did not tell the doctor about the abortion. Rachel was left permanently paraplegic, forced to use a wheelchair, from a condition later found directly attributable to a post abortion surgical infection. Rachel had not been told that there are alternatives to abortion. Had her parents known their daughter was pregnant, they would have provided her with the alternatives of keeping her child, or placing the child for adoption. Had Rachel's parents known of the abortion, they would have raised the possible relationship between the abortion and Rachel's symptoms so that she could get proper treatment quickly.<sup>2</sup>

Myoshi Callahan was 15 when she had an abortion without her parents' knowledge or consent. At the clinic, she received no counseling whatsoever and felt that her only alternative was abortion. As a result

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<sup>1</sup> Herrmann, "\$1.225M awarded in girl's abort death," New York Daily News, Tuesday, December 11, 1990, p. 13. See also, Canito, "\$1.2M won't bring her back," New York Post, Tuesday, December 11, 1990, p. 1.

<sup>2</sup> In re Amici Curiae of Focus on the Family, Hodgson v. Minnesota, 110 S. Ct. 3926 (1990), at App. 1a.

(more on reverse)

of the side effects resulting from the abortion procedure, Myoshi had to have a hysterectomy. Myoshi has since told both parents. They have grieved with her for the loss of life and for the ordeal that their daughter went through alone. Myoshi deeply regrets that her parents were not involved.<sup>3</sup>

Holly Trimble was 16 when she became pregnant and decided to have an abortion. Holly's main purpose for the abortion was so that she would not have to tell her parents about her pregnancy. She did not want to hurt them. Because she did not want to hurt them, Holly also would not talk to them about the turmoil of her abortion. Today, Holly deeply regrets her decision. She is certain that, had she been exposed to information about the development of the unborn child at the time of her decision, she would have carried her baby to term.<sup>4</sup>

Teresa Wubblesman Fangman was 16 when she learned she was pregnant. Teresa received no alternatives counselling and decided to abort her baby, primarily because she was afraid to tell her parents of her pregnancy. She did not want them to know she had disappointed them. The abortion exacted an extreme emotional toll. Five years later, Teresa's 15 year-old sister, impregnated on a date rape, went to her parents for help. With their support, she decided to carry her baby to term and then place the child for adoption. Teresa is convinced that, if she had known at the time of her abortion decision how supportive her parents would be to an unexpected pregnancy, she would not have had an abortion.<sup>5</sup>

Parental involvement in an adolescent's decision-making process helps ensure that the girl is fully aware of the physical, emotional, and psychological risks of an abortion and that these risks are minimized or avoided. Minimizing and avoiding such risks can only be beneficial to the adolescent, her family, and to society as a whole.

National Right to Life Committee  
State Legislation Department  
April 1992

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<sup>3</sup> *Id.* at App. 2a.

<sup>4</sup> *Id.* at App. 5a.

<sup>5</sup> *Id.* at App. 3a.



# national RIGHT TO LIFE committee, inc.

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## Parental Involvement Laws: The Minnesota Success Story

During the years in which a Minnesota parental notification law was in effect (1981-1986), not only did the teen abortion rate drop, but so did the teen pregnancy rate and birth rate. The teen abortion and birth rate declines were substantially greater than the comparable rates for older women who could not have been affected by the law.

Data from the Minnesota Department of Health show that during the years in which the state's parental involvement law was in effect, both the number and the rate of abortions among teenagers under the age of 18 declined.

During the years just before Minnesota enacted a parental notification law (1975-1980), the number of abortions among Minnesota female residents under the age of 18 increased by 41 percent. The abortion rate went up 53 percent.<sup>1</sup>

But during the years in which the parental notification law was in effect (1981-1986),<sup>2</sup> the number of abortions among teenagers under the age of 18 -- those subject to the law -- decreased by 34 percent. The abortion rate declined 26 percent.<sup>3</sup> While the abortion rate declined among ages 18-19 as well, a study published in the March 1991 American Journal of Public Health reveals that "the pre-enactment to post-enactment decline was substantially greater for 15-17 than 18-19 year-old women, and for 18-19 year-old women than 20-44 year-old women."<sup>4</sup> By contrast, during the same time period, the yearly abortion rates for women ages 20-44, who were substantially removed from the impact of the law, increased.<sup>5</sup> Furthermore, there was a marked drop in the abortion-to-birth ratio in the 15-17 year-old age group when compared to both 18-19 year-old women and 20-44 year-old women.<sup>6</sup>

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<sup>1</sup> Statistics calculated using raw data from Center for Health Statistics, Minnesota Department of Health print-outs, "Pregnancy Data For Women By Age Group, Minnesota Residence, 1970-1979" (February 1991) and "Pregnancy Outcomes and Pregnancy Rates by Age of Woman, Minnesota Residents, 1980-1983" (April 1990).

<sup>2</sup> The Minnesota law requiring an abortionist to notify the parents of a minor before performing an abortion on their daughter went into effect August 1, 1981. It was then enjoined (made inoperative) by court order from 1986 through 1990. The last full year in which parental notification was not required before a minor under the age of 18 could obtain an abortion was 1980. The only age group subject to the law was female residents of Minnesota under age 18. In July 1990, the U.S. Supreme Court upheld the law as constitutional in Hodson v. Minnesota, 110 S. Ct. 2926 (1990). The law is now back in effect.

<sup>3</sup> Statistics calculated using raw data from Center for Health Statistics, Minnesota Department of Health print-out, "Pregnancy Outcomes and Pregnancy Rates by Age of Woman, Minnesota Residents, 1980-1983" (April 1990).

<sup>4</sup> James L. Rogers et al., "Impact of the Minnesota Parental Notification Law on Abortion and Birth," American Journal of Public Health, vol. 81, no. 3 (March 1991): p. 295. Rather than simply citing percentages and rates, Rogers and his colleagues used generally accepted statistical techniques to measure the substantiality of the comparative decline. While too complex to describe in this fact sheet, these techniques are explained in the article.

<sup>5</sup> Id.

<sup>6</sup> Id. at p. 296.

(more on reverse)

**During the years in which the parental involvement law was in effect, both the total number of pregnancies and the pregnancy rate among teenagers under the age of 18 declined.**

During the years just before the enactment of the Minnesota parental notification law (1975-1980), the number of pregnancies among Minnesota female residents under age 18 increased by 5 percent. The pregnancy rate increased 14 percent.<sup>7</sup>

During the years in which the parental notification law was in effect (1981-1986), total pregnancies among teenagers under 18 years of age decreased by 27 percent, and their pregnancy rate went down 19 percent.<sup>8</sup>

**During the years in which the parental involvement law was in effect, the birth rate among teenagers under the age of 18 decreased.**

During the years just before the enactment of the Minnesota parental notification law (1975-1980), the number of births to Minnesota female residents under age 18 had decreased by 19 percent. During those years the average birth rate was 10.2 per 1,000 women.<sup>9</sup>

During the years in which the parental notification law was in effect (1981-1986), total births to teenagers under 18 years of age declined 20 percent, and their average birth rate went down to 8.6 per 1,000 women.<sup>10</sup> While the decline in birth rates among ages 15-17 and ages 18-19 was similar,<sup>11</sup> both age groups experienced a substantially greater decline than women ages 20-44.<sup>12</sup>

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March 1991

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<sup>7</sup> Statistics calculated using raw data from Minnesota Center for Health Statistics print-outs, "Pregnancy Data For Women By Age Group, Minnesota Residence, 1970-1979" (February 1991) and "Pregnancy Outcomes and Pregnancy Rates by Age of Woman, Minnesota Residents, 1980-1988" (April 1990).

<sup>8</sup> Statistics calculated using raw data from Center for Health Statistics, Minnesota Department of Health print-out, "Pregnancy Outcomes and Pregnancy Rates by Age of Woman, Minnesota Residents, 1980-1988" (April 1990).

<sup>9</sup> Statistics calculated using raw data from Minnesota Center for Health Statistics print-outs, "Pregnancy Data For Women By Age Group, Minnesota Residence, 1970-1979" (February 1991) and "Pregnancy Outcomes and Pregnancy Rates by Age of Woman, Minnesota Residents, 1980-1988" (April 1990).

<sup>10</sup> Statistics calculated using raw data from Center for Health Statistics, Minnesota Department of Health print-out, "Pregnancy Outcomes and Pregnancy Rates by Age of Woman, Minnesota Residents, 1980-1988" (April 1990).

<sup>11</sup> Note that the birth rate for ages 18-19 includes births to girls who became pregnant while they were 17 and subject to the law but who turned 18 during the pregnancy. Therefore, even though girls ages 18-19 were not subject to the law, their birth rate decline may in part be a reflection of the decline in the pregnancy rate among girls under the age of 18.

<sup>12</sup> Rogers et al., "Impact of the Minnesota Parental Notification Law," p. 296. See explanation in footnote 4.

March 12, 1995 AMERICANS UNITED FOR LIFE

To: Those working to pass Parental Involvement Statutes

From: Judy Koehler, Sr. Legislative Counsel, AUL

Last week I assisted Texas Sen. Florence Shapiro and Pro-life leaders in their effort to pass Parental Notice legislation. Sen. Shapiro gave me this information from a highly respected Texas polling firm. This information can be helpful to you. It is a timely indication of continuing positive public support for parental involvement in a minor child's abortion decision.

Texas Poll: How Texans stand on 20 key issues

Polling date: Feb. 25, 1995

Source: The Harte-Hanks Texas Poll, conducted Feb. 2-11, 1995 by the Office of Survey Research of the University of Texas, 1,011 adult Texans surveyed by telephone. Margin of error: 3%.

Key issue: Parental Notification (abortion)

Question: Do you favor or oppose parental notification of abortions to minors?

	<u>All</u>	<u>Rep.</u>	<u>Dem.</u>	<u>Ind.</u>
Favor	74	83	65	72
Oppose	21	14	28	24
Don't know	5	3	7	4

## Restoring Parental Rights

### The Supreme Court on Teen Abortion

In the raging debate over abortion, one subject has received increasing support from those on both sides of the issue. Most Americans, no matter what their views on abortion, advocate parental notification before a teenager may have an abortion. According to a June 1990 *New York Times/CBS News* poll, 76 percent of those surveyed believe that both parents should be notified before their teenage daughter's abortion (see p. 2).

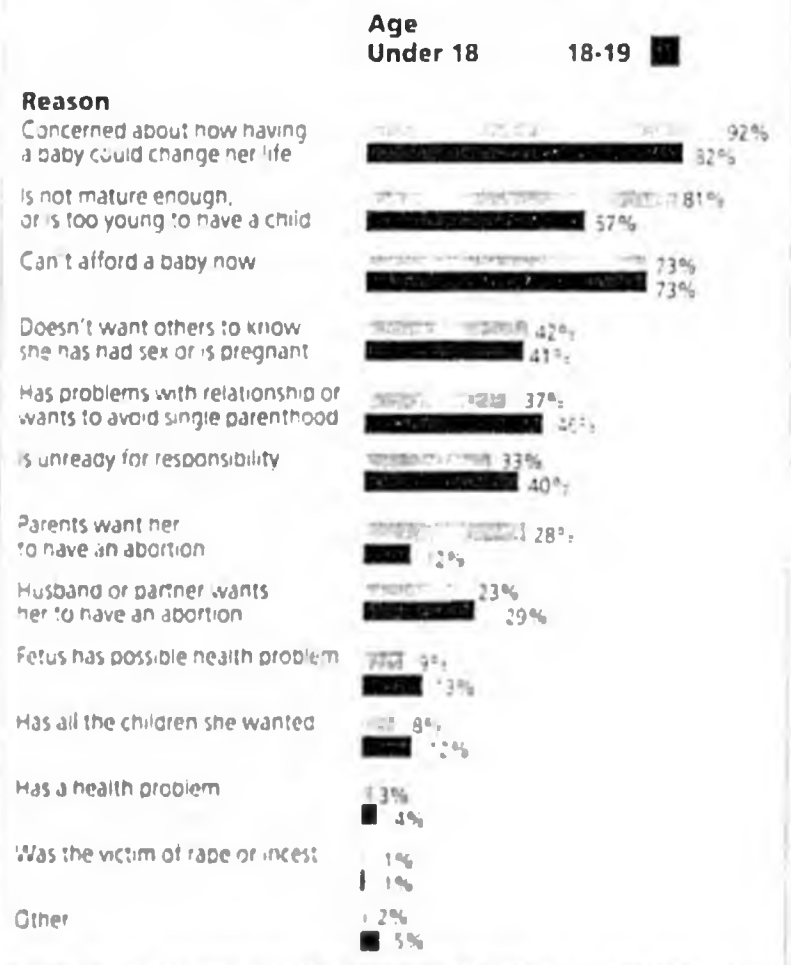
On June 25, 1990, the United States Supreme Court upheld Minnesota and Ohio laws which acknowledge the right of parents to be informed of their daughter's intention to undergo this potentially life-changing procedure. Yet legitimate questions continue to surface about the sufficiency of parental involvement laws. In this first issue of *AUL Insights*, we will explore some of the commonly asked questions about these laws and the Supreme Court's most recent decisions.

#### In This Issue:

- The Public: Parents Need to Know* - p. 2
- How Many Teenagers are Having Abortions?* - p. 3
- Minnesota's Success Story* - p. 4
- Where Teens are Protected* - p. 5
- What Killed Becky Bell?* - p. 6
- A Mother Fights for Her Rights* - p. 7

### Why Do Teenagers Choose Abortion?

Most of the respondents in this 1987 survey said that more than one factor contributed to their decision to have an abortion.



Source: Alan Guttmacher Institute, *Family Planning Perspectives*, July-August 1988

**Q: Why are parental involvement laws important?**

These laws make sense for several reasons:

- ▼ Because nearly 80 percent of abortions on teenagers occur in outpatient clinics, a girl is unlikely to have the benefit of conferring with a trusted family physician about her decision. Parental involvement laws ensure that she talks with those who know her best—her parents—about the pros and cons of her decision, the risks of abortion, and alternatives available to her.
- ▼ Parents have traditionally been recognized as having rights when it comes to directing the rearing of their children. Their consent is required before all other non-emergency surgical procedures besides abortion. Surely, parents have a right to know of a medical decision that could affect their daughter physically and emotionally for the rest of her life.

- ▼ When parental involvement laws are in effect, teens become more sexually responsible. During the nearly five years the Minnesota law was operative, abortion rates dropped 27.4 percent, birth rates fell 12.5 percent, and pregnancies decreased by 20.5 percent in minors aged 10-17 (see p. 4).

**Q: What is the difference between notification and consent laws?**

Parental notification laws require that a minor's parents be *informed* of her decision to have an abortion before the procedure is performed. The parents are not allowed to make the decision, but they do have the benefit of helping their daughter make an informed choice.

Parental consent laws require *permission* from the parents before a physician proceeds with an abortion on their daughter. These laws parallel others which require parental permission before a minor undergoes elective surgery and medical treatment.

**Q: What did the Supreme Court justices decide in the 1990 parental notice cases?**

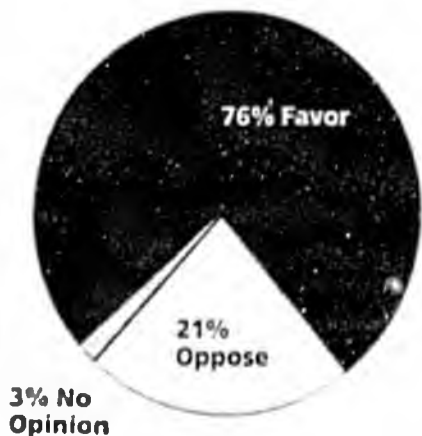
The Supreme Court upheld both laws. In *Ohio v. Akron Center for Reproductive Health*, the Court agreed that the state could require:

- ▼ notification of one parent prior to a minor's abortion with a judicial bypass option (see below)
- ▼ personal notice by the physician, rather than an employee
- ▼ a 24-hour waiting period between notification and an abortion
- ▼ a "judicial bypass" mechanism which allows a judge to determine whether there is "clear and convincing evidence" that the teen is mature enough to have an abortion without her parent's knowledge or that it is not in her best interest to notify her parent

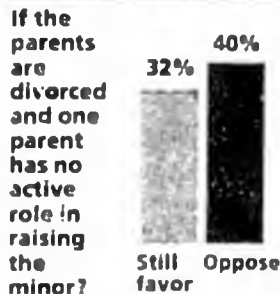
In *Holston v. Minnesota*, the Court upheld:

**The Public: Parents Need to Know**

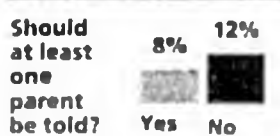
Percentage who favor/oppose notification of both parents prior to those under 18 obtaining an abortion:



**Of the 76% who favor notifying both parents:**



**Of the 21% who oppose notifying both parents:**



Those who expressed no opinion are not illustrated.

## How Many Teenagers are Having Abortions?

AGE	Number of Abortions	Abortion Rate per 1,000 Women	Percentage of All Abortions	Comments
Under 15	16,970	9.1	1.1%	<ul style="list-style-type: none"> <li>• Women younger than 20 account for 26 percent of all abortions.</li> <li>• At 1985 rates, 9 percent of young women will have had at least one abortion by their 18th birthday. By age 20, 18 percent will have undergone an abortion.</li> <li>• About 42 percent of pregnant teenagers choose abortion.</li> </ul>
15 - 17	165,630	30.7	10.4%	
18 - 19	233,570	63.0	14.7%	
Compare to all women 15-44	1,588,550	28.0	≈ 100%	

Figures are for 1985, the most recent year for which this information is available.  
 Source: Alan Guttmacher Institute, *Family Planning Perspectives*, March/April 1989 and May/June 1990.

▼ notification of both parents prior to a minor's abortion only if a teenager has the option of seeking a bypass of this requirement from a judge

▼ a 48-hour waiting period between notification and an abortion

### Q: Is this the first time the Supreme Court has heard parental involvement cases?

The justices have decided a number of similar cases in the past 14 years—five to be exact.

- ▼ *Planned Parenthood Association of Kansas City, Mo., v. Ashcroft*, 1983, upholding a one-parent consent law
- ▼ *City of Akron v. Akron Center for Reproductive Health*, 1983, striking down regulations which required physicians to obtain one parent's consent before performing an abortion on anyone under 15, because a judicial bypass provision was not provided
- ▼ *H.L. v. Matheson*, 1981, upholding a two-parent notice statute for immature, dependent minors
- ▼ *Bellotti v. Baird*, 1979, establishing the required components of a judicial bypass for a parental consent statute
- ▼ *Planned Parenthood of Central Missouri v. Danforth*, 1976, striking down a parental consent statute which did not contain a judicial bypass provision

The two cases last term expanded and clarified previous decisions. But they also examined several new issues. For the first time, the Supreme Court upheld a 48-hour

waiting period after parental notification, direct physician notification to parents, more thorough judicial bypass requirements, and notification of *both* parents if a judicial bypass is in place.

### Q: Why is the doctor required to notify a girl's parents? Couldn't a clinic employee do that just as well?

Direct contact with the physician gives the parents a chance to provide better advice to their daughter and to inform the doctor about her pertinent medical history.

According to the *Akron* opinion, "The parent who must respond to an event with complex philosophical and emotional dimensions is given some access to an experienced and, in an ideal case, detached physician who can assist the parent in approaching the problem in a mature and balanced way." The Court concluded that this type of benefit may not be possible if a less qualified person notifies the parent.

### Q: Isn't it difficult and time-consuming for a physician to locate both parents, especially if there has not been any contact between them and their daughter?

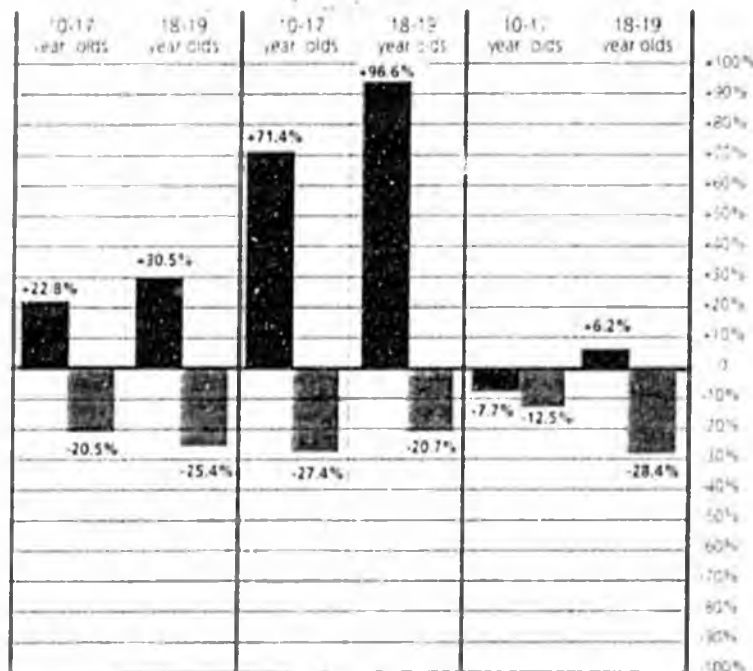
Yes, in some cases it is difficult or impossible to track down a parent who has not had contact with his or her daughter. For this reason, neither the Ohio or Minnesota laws requires a manhunt for a teenager's parents.

The Ohio law specifies that a doctor attempt to notify a parent with "reasonable effort" in person or by phone. If unsuccessful, the doctor can notify the parent by mail and proceed with the abortion after waiting 48 hours.

## Minnesota's Success Story

During the nearly 5 years Minnesota's parental notice law was in effect, the teenage pregnancy, abortion and birth rates declined substantially. The law encouraged responsible teen behavior.

Key:  Before the law (1975-1980)  During the law (1980-1986)



Source: Brief of the Association of American Physicians and Surgeons as Amicus Curiae, *Hobson v. Minnesota*, 1989. The brief may be obtained from AFL's public affairs department.

Minnesota law stipulates that the physician use "reasonable diligent effort" to notify both parents. This means that if the second parent cannot be located, notice to one parent is sufficient.

### Q: What is the purpose of the waiting period after the physician notifies the parent?

A waiting period provides parents and their daughter time to discuss the implications of her decision to have an abortion and consider alternatives available to her. The Court found a 24- or 48-hour waiting period constitutional.

### Q: What are the reasons for the judicial bypass procedure?

The judicial bypass procedure is a safeguard for minors who want to undergo an abortion without their parents' knowledge. While the best option is for a caring parent to be informed, a few girls legitimately fear parental reprisal or abuse. The teenager may be the victim of incest. In this situation, the solution is not for the girl to suffer alone in an abusive situation, but for authorities to intervene.

The bypass also allows a teenager to show that she is mature enough to make the decision without informing her parents.

### Q: What must a judicial bypass provision contain?

In its prior opinions, the Supreme Court established four criteria:

- ▼ The law must allow a teen to show that she is sufficiently informed about her decision and mature enough to make the decision without parental involvement.
- ▼ If she is not shown to be mature, the bypass must permit the minor to show that an abortion would be in her "best interests."
- ▼ The teen's identity must be protected during the bypass procedure.
- ▼ The judicial bypass must be prompt.

### Q: The judicial bypass seems like an intimidating process. Is anything done to help the teenager through it?

Recognizing that teens seeking this option might seem overwhelmed, the process in Ohio was simplified. An attorney is provided at no cost to the teenager to help her fill out the correct form and assist her through what the Supreme Court described as a "simple and straightforward procedure." In most states with parental involvement laws, a guardian, court-appointed lawyer or friend can help the teenager file a petition and help her through the bypass process.

**Q: Court proceedings can take a long time. Does a judicial bypass unduly delay an abortion?**

No. Under the Ohio law, the juvenile court is required to hold a hearing at the earliest opportunity, and no later than five business days after a minor files her petition for a judicial bypass.

The court must make its decision promptly at the end of the hearing. If the court fails to rule in the specified time period, a "constructive authorization" results and the teen may obtain an abortion without parental notification.

**Q: Now that the Supreme Court has decided these cases, what will state legislatures be able to do?**

The two parental notice decisions provide additional guidance for legislators who want to introduce this type of law. States can be confident that they may enact legislation which requires any of the following:

- ▼ two-parent notice with a properly drafted judicial bypass provision
- ▼ one-parent notice with a judicial bypass
- ▼ assessment by a judge that the teen is mature or that an abortion is in her best interests
- ▼ personal notification of the parents by the physician
- ▼ parental notice at least 24 or 48 hours before the abortion

**Q: Did the opinions in these cases give any indication of the justices' leanings on the abortion issue?**

Yes, almost predictably. Chief Justice Rehnquist, and Associate Justices Scalia, White and Kennedy adhered to a more lenient standard of review, asking opponents to demonstrate why the parental notice laws are *not* constitutional, rather than requesting the state to show that the law is constitutional. They have used this standard of review in past cases. Justice Scalia explicitly expressed opposition to the

**Where Teenagers Are Protected**

The Status of Parental Involvement Laws

State	Type of Law	Status at Present
Alabama	Consent	enforced
Alaska	Consent	not enforced
Arizona	Consent	being challenged in court, inoperative
Arkansas	Notice	enforced
California	Consent	being challenged in court, inoperative
Colorado	Consent	inoperative
Connecticut	None	
Delaware	Consent	not enforced
D.C.	None	
Florida	Consent	inoperative
Georgia	Notice	being challenged in court, inoperative
Hawaii	None	
Idaho	Notice	not enforced
Illinois	Notice	being challenged in court, inoperative
Indiana	Consent	enforced
Iowa	None	
Kansas	None	
Kentucky	Consent	being challenged in court, inoperative
Louisiana	Consent	enforced
Maine	Notice	inoperative
Maryland	Notice	not enforced
Massachusetts	Consent	enforced
Michigan	Consent	effective 4/1/91
Minnesota	Notice	upheld by U.S. Supreme Court, enforced
Mississippi	Consent	being challenged in court, inoperative
Missouri	Consent	upheld by U.S. Supreme Court, enforced
Montana	Notice	not enforced
Nebraska	Notice	inoperative
Nevada	Notice	being challenged in court, inoperative
New Hampshire	None	
New Jersey	None	
New Mexico	None	
New York	None	
North Carolina	None	
North Dakota	Consent	not enforced
Ohio	Notice	upheld by U.S. Supreme Court, enforced
Oklahoma	None	
Oregon	None	
Pennsylvania	Consent	being challenged in court, inoperative
Rhode Island	Consent	not enforced
South Carolina	Consent	enforced
South Dakota	Consent	not enforced
Tennessee	Consent	being challenged in court, inoperative
Texas	None	
Utah	Notice	upheld by U.S. Supreme Court, enforced
Vermont	None	
Virginia	None	
Washington	Consent	inoperative
West Virginia	Notice	enforced
Wisconsin	None	
Wyoming	Consent/Notice	enforced

A detailed chart may be obtained from ACLU's public affairs department. Source: American United for Life, November 1992.

*Roe v. Wade* decision, which legalized abortion on demand in 1973.

Justices Blackmun, Brennan and Marshall held firm to their position that abortion is a fundamental right which must not be regulated even minimally by the state. Justice Stevens, while maintaining that abortion is a fundamental right, was more flexible in agreeing to uphold some degree of abortion regulation.

Justice O'Connor voted to uphold the parental notice laws. There is no basis to conclude that she has retreated from her prior statements about the state's "compelling" interests in "the potentiality of human life...which exists *throughout* pregnancy." At most, Justice O'Connor's writing indicates that she will not cut back on *Roe* any more than absolutely necessary, adhering

to her statement in *Webster v. Reproductive Health Services* that the time to decide *Roe*'s fate is when a case squarely confronts it.

**Q: Do these decisions threaten *Roe v. Wade*?**

The parental notice decisions do not directly threaten *Roe*. Neither state attorney general asked for *Roe* to be overturned or raised issues which would challenge abortion on demand. The 1990 parental notice decisions simply confirm the U.S. Supreme Court's unmistakable trend of promoting parental rights and protecting minors' health. ■

For an in-depth legal analysis of the 1990 Supreme Court decisions, refer to the AUL Analysis Memo No. 11. It may be obtained from the AUL Public Affairs Department.

## What Killed Becky Bell?

In the dispute over who will exercise the ultimate authority and responsibility for the hearts, minds and bodies of our children, there are some new combatants. Planned Parenthood, the Fund for a Feminist Majority and several other "pro-choice" groups are using the case of an Indiana teenager who died of pneumonia, allegedly caused by an illegal abortion, in an attempt to strike down laws requiring parental consent before a minor can obtain an abortion.

Becky Bell was a 17-year-old girl who died September 16, 1988, under circumstances the pro-choice groups say was the result of her trying to circumvent Indiana's parental consent law by seeking an illegal abortion. Bell's parents have announced plans to use their daughter's death as a rallying cry against such laws. They also have participated in the creation of a video they want to show in public schools and universities that they hope will lead to the repeal of parental consent legislation. The Supreme Court recently upheld parental consent laws when they include a judicial bypass provision.

Though the Marion County (Indiana) coroner's report lists the cause of Becky's death as "septic abortion with pneumonia," the manner of death was said to be "undetermined" and the circumstances leading up to her death are anything but clear.

According to Dr. John Curry, former head

of the Tissue Bank at Bethesda Naval Hospital, "Septic abortion usually means that as a result of destructive actions within the uterus, an infection has started which subsequently spreads to the rest of the body. In this case, the pathology report is notable in that while there is evidence of massive infection in the lungs and elsewhere in the body, there is no evidence of infection on the outside of or within the uterus." Curry says the germ that killed her "is a common pneumonia germ (streptococcus pneumoniae) that could have been treated had it been detected within the first six days and which is unlikely to originate from a contaminated abortion procedure."

The coroner's report notes that "Rebecca Bell...reportedly has a history of substance abuse for which she was hospitalized from mid-February through April, 1988. Investigation disclosed that (she) became pregnant in

mid-May, 1988 (according to Planned Parenthood referral receipt)."

Becky's mother believes her daughter took something to induce an abortion. But in an interview conducted by Rochelle Sharpe of Gannett News Service with Becky's best friend, Heather Clark, Heather said she believes Becky had a spontaneous abortion (miscarriage).

The coroner's report says that Becky "reportedly was at a party where various drugs were being used (cocaine, 'speed' and LSD) on the weekend of September 10-11, (and later) claimed that someone had put 'speed' in her drink."

The case raises several important questions.

First, why would Becky undergo an illegal abortion when she had scheduled a legal procedure in neighboring Kentucky for the day after she died?

Second, was Becky undecided about whether to seek an abortion or place her baby for adoption? She had papers listing abortion clinics and adoption agencies in her purse when she died.

Third, did her father contribute to his daughter's frustration? According to Heather, Becky's father said that if she messed up one more time, she'd be thrown out of the house.

Fourth, why does no one mention the crisis pregnancy centers or other pro-life counseling agencies that not only provide free counseling but often serve as bridges between parents and children and, if necessary,

can offer free housing for girls in crisis situations? The Bells and the pro-choice groups make it appear as if there was no other alternative for Becky than an illegal abortion.

Supporting Heather Clark's account that no abortion had been performed was a doctor who provided emergency treatment when Becky finally went to the hospital. The doctor was quoted by Rochelle Sharpe in her story: "I don't know whether we're going to be able to save the baby."

If Becky's parents had known about her pregnancy, they most likely would have made sure she received medical attention when health complications arose—attention that could have saved her life. The real lesson to be learned from Becky Bell's death is not that parental involvement laws are bad. It is just the opposite—that young girls (and especially Becky, who reportedly had a history of drug abuse that may have contributed to her inability to reason in her own best interests) need the advice and involvement of their parents.

The medical cause of Becky Bell's death may have been pneumonia, but the underlying cause remains unclear. One thing is clear: her death was not due to Indiana's parental consent law. ■

*by Cal Thomas*

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## A Mother Fights for Her Rights

Becky Bell's parents aren't the only ones who hold a strong opinion about laws that involve parents in a teenager's abortion decision (see p. 6). While Karen and William Bell traverse the country testifying against parental consent legislation, a California mother wishes the law had safeguarded her rights and those of her teenage daughter.

At a small junior high school in rural California, Virginia Preston met with her daughter's principal early in 1985. She

asked him to inform her of anything that related to 14-year-old Erin, who had a learning disability. He agreed, and they instituted a program of written daily reports from Erin's teachers.

After a sex education class in March, Erin told her homeroom teacher that she thought she might be pregnant. The teacher and a colleague explained to Erin that she must act quickly to get an abortion and that she didn't have to tell her parents

of the suspected pregnancy. The teacher sent a note to Mrs. Preston saying that Erin needed to stay after school, but instead drove the girl to a health center for a pregnancy test. The results were positive.

The teacher and her colleague then met to discuss how they would procure an abortion for Erin. Both the principal and school superintendent allegedly were aware of Erin's pregnancy and her teacher's involvement, and neither notified the girl's parents.

Erin was taken to the welfare department where the teacher helped her apply for Medical benefits to pay for the abortion. That day she forged Erin's daily reports so that Mrs. Preston would think her daughter had attended regular classes.

On March 22, during school hours, a rape crisis counselor took Erin to an abortion clinic for pre-abortion testing. Staff members didn't attempt to determine her level of maturity or understanding, but told her abortion was quick and easy and that her parents need never know.

On Friday, Erin's teacher sent a note home with her, asking if the teenager could babysit the next day. She explained that she would be out late and requested that Erin stay overnight at her home. But Erin didn't babysit. Instead, she was taken to Chico Feminist Women's Health Center for an abortion.

Erin kept quiet about the abortion. But four days later, Mrs. Preston received a telephone call from the school nurse, who told her for the first time about Erin's abortion and its resulting complications. Erin was rushed to a hospital for emergency surgery.

The Prestons were angry, and rightly so. They had asked to be kept informed of their daughter's progress and concerns, but had been intentionally deceived. Erin and her mother filed suit against school and clinic officials. They charged that Mrs. Preston's constitutional right to rear her teenage daughter and Erin's right to parental guidance had been violated. They also charged that Erin's constitutional "right to choose" had been disregarded since those advising her had denied her any real choices.

Most of the school and clinic staff settled the case out of court. But the superintendent

pressed for a decision, and a court ruled in his favor before the case went to trial.

On August 7, 1990, the California Court of Appeals upheld the lower court's ruling, saying that "as a matter of law the various conduct alleged is not 'extreme and outrageous'" solely because California law permits minors to obtain abortions without the knowledge or consent of their parents. The California Supreme Court refused to hear the Prestons' appeal.

AUL attorney Ann-Louise Lohr, co-counsel in the case, remarked, "Here, an elaborate web of deception was spun by public officials, carried out in a clandestine manner and perpetrated on an unknowing mother who was deceived and lied to in the name of 'assistance.' Such outrageous and deceptive conduct should not, as a matter of law, be tolerated."

Yet this conduct is tolerated. Before Erin's abortion, her teacher took 10 other girls to have pregnancy tests without their parents' knowledge or consent. And she accompanied at least one other teenager to a clinic for an abortion, again without informing the parents. School officials allegedly knew of this practice and permitted it to continue.

It doesn't just happen in California. The tragedy that Erin and her mother experienced could be repeated in every one of the 38 states which do not have enforced parental involvement laws. Until these safeguards are in place, no parent is guaranteed the right to assist a pregnant teenage daughter in making an informed decision about her options. ■

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*AUL Insights* is published periodically by Americans United for Life to provide readers with a factual review of pro-life issues.

AUL is a nonprofit, public-interest law firm and education organization, committed to defending the right to life through vigorous judicial, legislative and educational efforts since 1971.

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